

OP 03.04: SEXUAL MISCONDUCT

POLICY AND PROCEDURE

I. Statement of Policy

Mississippi State University (“the university” or “MSU”) 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. This policy of non-discrimination includes, but is not limited to admission, employment, and participation in educational programs or activities.

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 harassment, sexual assault, dating or

as “Title IX Sexual Harassment.” Most of the rules and procedures in this policy apply equally to sexual misconduct generally and to Title IX Sexual Misconduct in particular. Where the rules or procedures differ, those differences are explicitly stated.

III. Definitions
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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

- c. "Dating violence" refers to physical violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim; and where the existence of such a relationship shall be determined based on a consideration of (i) the length of the relationship; (ii) the type of relationship; and (iii) the frequency of interaction between the persons involved in the relationship.
- d. "Stalking" refers to engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others, or suffer substantial emotional distress. Stalking violates this policy when it is undertaken, at least in part, for a sexual purpose.

3.

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 effective, 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.

2. Reporting to the University

Who

- 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,

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

of the procedures herein, or undertake any response that in the judgement of the Title IX Coordinator interferes with or conflicts with the response under this policy. In some circumstances, however, facts related to allegations under this policy may be considered by departments, organizations, and other units in assessing an individual's fitness for employment, membership, or participation. These circumstances are discussed below.

- ***Inform students of your obligations.*** Many Mandatory Reporters 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 Mandatory Reporter 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.

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These confidential resources 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:

Office of Survivor Support

The university's Office of Survivor Support (OSS) can guide survivors 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, they will be given the option of meeting with OSS. The office can provide assistance on a wide range of issues, from seeking immediate medical attention and/or a Physical Evidence

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VI. Prohibition on Retaliation

Retaliation against individuals for reporting sexual misconduct, or for participating in any capacity in proceedings under this policy, is strictly prohibited. Retaliation should be reported immediately to the Title IX Coordinator, and 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 or participating in proceedings under this policy. Retaliation includes any action that would deter a reasonable person from reporting or participating in proceedings under this policy.

misconduct. Upon receiving such notification, the Title IX Coordinator¹ will promptly contact the alleged victim, who is referred to herein as the “complainant.” A person who has been reported to be the perpetrator of conduct that could constitute sexual misconduct is referred to as the “respondent.” After a formal complaint has been submitted, the complainant(s) and respondent(s) in a particular matter are referred to as the “parties.”

Upon initial notification, the Coordinator will inform the complainant of the availability of supportive measures as described below, the ability to report to law enforcement, and the procedure for filing a formal complaint of sexual misconduct.

2. Supportive Measures

Supportive measures are non-disciplinary services offered by the university as it deems appropriate to the complainant or respondent in order to restore or preserve equal access to the university’s programs, activities, services, or benefits.

The Title IX Coordinator will inform the complainant—and where a formal complaint has been filed, the respondent—of the availability of supportive measures, and will coordinate their implementation along with other university personnel as needed. If a party wishes to request specific supportive measures, it is his or her responsibility communicate that request to the Title IX Coordinator.

Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, providing an escort or other security, mutual orders mandating no contact between individuals, changes in housing or work locations, leaves of absence, monitoring of certain areas, or other similar measures.

Supportive measures are available whether or not a complainant elects to file a formal complaint, and may be implemented or maintained without regard to the outcome of a complaint. They are non-punitive in nature and must not unreasonably burden the other party. The university will endeavor to keep information concerning supportive measures as private as is reasonably possible, but may determine it is necessary to share this information with certain individuals in order to effectively implement needed assistance.

3. Formal Complaint

A formal complaint is required before the university will initiate an investigation of sexual misconduct. A formal complaint is a document, which must be signed by or otherwise reflect the authorization of the complainant, that alleges sexual misconduct against a person and requests that the university investigate the matter. It may be submitted in person or via electronic means.

If a complainant does not submit a formal complaint, the Title IX Coordinator may determine that the matter

Where the university has received multiple complaints of sexual misconduct that allegedly involve one or more of the same parties and/or arise out of the same facts or circumstances, the Title IX Coordinator shall have discretion to consolidate these complaints for purposes of proceedings under this policy. Where consolidation occurs, the parties will be notified in writing.

4. Written Notification of Parties

Notification of Parties

Prior to any interview, meeting, or hearing with the complainant or respondent, the university will provide written notice of the date, time, location, participants, and purpose at least 24 hours in advance.

Role of Investigators

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, university policies, relevant laws and regulations, proper investigation procedures and techniques, impartiality and avoiding conflicts of interest, and other relevant issues. The investigator may regularly consult with the Title IX Coordinator on the progress of the investigation and potential issues that require additional follow-up.

Role of Advisors

The parties may be accompanied to any interview, meeting, or hearing by the advisor of their choosing, who may be but is not required to be an attorney. While the university will make reasonable efforts to address procedural or other questions raised by advisors, the parties are expected to speak for themselves with respect to the substantive allegations. It shall be the responsibility of the party, not the university, to inform any advisor and secure their attendance at any such interview, meeting, or hearing.

Where a party does not have an advisor for the investigation stage of the process, the university will provide one at no charge upon written request to the Title IX Coordinator. It is the responsibility of the party to submit this request as early as possible. Because hearings require advisors to conduct cross-examination, the person advising a party during the investigation stage may not be the same person to advise at the hearing stage. For more information on advisors for hearings, please see below.

Inspection of Evidence

The university will provide all parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is related to the allegations. This normally will occur via the investigative report process outlined herein. If a party wishes to review evidence prior to the dissemination of the report, or at any other point, he or she should make that request in writing to the Title IX Coordinator.

Confidential Materials

The university will not access, consider, disclose, or otherwise use in connection with an investigation a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in a professional capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the university obtains that party's voluntary, written consent to do so.

Conflicts of Interest

If a party believes

Acceptance of Responsibility

A respondent is presumed not responsible until proven otherwise by sufficient evidence. However, if a respondent wishes to accept responsibility for some or all of the allegations against them, they may do so at any point prior to the conclusion of the live hearing.

Where a respondent wishes to accept responsibility prior to a live hearing, he or she should communicate that fact to the Title IX Coordinator in writing. The Coordinator will inform all parties of the acceptance of

Title IX Dismissal

If at any point prior to a determination on responsibility the Title IX Coordinator determines that a complaint or allegation, if proven, (i) would not meet the definition of Title IX Sexual Harassment set forth herein, (ii) did not occur on an MSU campus or otherwise in connection with a university program or activity; (iii) did not occur against a student, employee, or other person who at the time of the filing of the formal complaint was participating in or attempting to participate in a university program or activity; or (iv) did not occur against a person in the United States, the Title IX Coordinator will dismiss the complaint or allegation for purposes of Title IX.

Dismissal for purposes of Title IX means that certain specific provisions of this policy applicable only to Title IX Sexual Harassment will not apply to further proceedings. The matter will continue to be investigated and adjudicated, as appropriate, under the remaining provisions of this policy.

Dismissal on the Merits

Where the Title IX Coordinator determines that the factual allegations underlying a complaint, if proven, would meet neither the definition of Title IX Sexual Harassment nor the definition of sexual misconduct herein, the Coordinator shall dismiss the complaint or allegation on its merits.

Dismissal on the merits means that no further investigation or adjudication proceedings will occur under 239.822(4) Title IX.

- 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.

Referral Under Other Policies

Where the Title IX Coordinator determines that the dismissal under this policy is appropriate, he or she will determine whether the matter should be referred for further proceedings under the Non-Discrimination and Anti-Harassment Policy (OP 3.03), the Code of Student Conduct (OP 91.100) or any other university policy. Where the Coordinator determines that such proceedings may be warranted, the matter will be referred to the appropriate university personnel.

Notification of Dismissal

Where the Coordinator determines that dismissal under this section is warranted, he or she will promptly notify the parties in writing of the dismissal, the gro(a) (ll)T7M-3.9 (o)10.8 ((dm (ppr)-3.9 ((l)TJc(r)8Tw 5}3.(i)-4.6

laws and regulations, and other relevant issues. An adjudicator shall not have served as an investigator, coordinator, advisor, or informal resolution facilitator in the matter.

Prior to the hearing, the parties will be notified of the identity of the adjudicator. If any party has reason to believe that an adjudicator has a conflict of interest or bias that would prevent him or her from deciding the matter fairly and impartially, they should communicate that belief to the Title IX Coordinator as early as possible, and in all events at least five days prior to any hearing.

In addition to the adjudicator, the Title IX Coordinator may be present at the hearing to advise as needed on matters of university policy or procedure. The Coordinator may not serve as an adjudicator or make recommendations as to the ultimate finding of responsibility or non-responsibility.

Presentation of Evidence

All parties will be permitted to present relevant testimony and other evidence at the hearing. Each party's advisor will be permitted to ask any party or witness relevant questions and follow up questions. Parties may not directly question other parties or witnesses.

Before a party or witness answers a question, the adjudicator must determine whether the question is relevant, and signal to the party or witness that they should answer. Where the adjudicator determines that a question is not relevant, he or she should state briefly the basis for that determination.

Witnesses may be called by any party or by the adjudicator. The adjudicator shall have discretion to structure the order in which witness testimony and other evidence are presented, provided that all parties are afforded equal opportunity to present relevant evidence and question all witnesses.

Relevance of Evidence

Testimony and other evidence are relevant where the adjudicator determines that they pertain to the allegations under review and are reasonably likely to make some material fact more or less probable. Questions are relevant where the adjudicator determines that they are reasonably likely to elicit a response that meets the definition of relevant testimony.

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- A statement of the allegations considered.
- A description of the procedural steps taken from the receipt of the formal complaint through the determination on responsibility, including a description of the notifications to the parties, interviews and other methods of evidence gathering, and hearings.
- Findings of relevant fact.
- Conclusions applying relevant university policies to the facts.
- A statement of the result for each separate allegation, including any sanctions or other remedies, and the rationale for the same.
- A statement of the grounds and procedures for appeal.

The adjudicator will transmit this determination to the Title IX Coordinator, who will provide a copy to all parties simultaneously. The Title IX Coordinator also may communicate all or part of the determination to any university personnel deemed necessary to carry out any sanction or remedy, or to ensure the safety of the university community.

11. Appeals

Any party may appeal from the final determination on responsibility or from the dismissal of any complaint or specific allegation under this policy.

Grounds for Appeal

Permissible grounds for appeal are: (1) a procedural error that likely affected the outcome of the matter; (2) new evidence that was not reasonably available at the time of the determination or dismissal that likely would affect the outcome of the matter; or (3) evidence of an impermissible conflict of interest or bias for or against

The appellate adjudicator will have received appropriate training on university policies, procedures for fair and impartial decision-making, and relevant laws and regulations. Appellate adjudicators will not have participated in the hearing or other pre-appeal proceedings in any matter before them.

Appellate Decision

The appellate adjudicator will decide the appeal based on the hearing record, the parties' written statements on appeal, and applicable university policies. He or she may consult

3. Informal Resolution Process

The nature of an informal resolution process will vary depending on the circumstances and wishes of the parties. The process is strictly voluntary. No one, whether complainant, respondent, or third party, will be compelled to participate in any portion.

Informal resolution efforts always will be supervised by a properly-trained person, such as an administrator or counselor. The Title IX Coordinator will oversee the informal resolution process, and will be informed of the outcome, but neither the Title IX Coordinator nor any investigator or adjudicator involved in the matter will be present at any informal resolution meeting.

4. Record Keeping

To facilitate candid exchange of information, statements made by participants in any informal resolution process are confidential and not admissible in any hearing or other disciplinary proceeding under this policy. The university will maintain records of the outcome of informal resolution proceedings, but will not maintain records of the specific contents of any such proceeding or statements made therein.

5. Effects of Informal Resolution

Employment Decisions

In matters where the respondent is an employee, a university department or unit shall not implement additional sanctions based solely on allegations resolved under this policy, but may consider the fact of a finding on responsibility, or facts revealed in the course of an investigation hereunder, as one factor in any general assessment of an employee's overall performance, continued fitness for employment, and/or assignment of duties.

Nothing in this policy prevents any university department or unit from taking non-punitive steps in response to allegations of sexual misconduct to ensure the safety or productivity of employees. 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 accused of a violation of this policy.

Visitors and Guests

Nothing in this policy grants any procedural or substantive right to any person accused of sexual misconduct who is not a university student, employee, or applicant for admission or employment. The university retains full discretion to respond to alleged harassment or misconduct by visitors, contractors, and other non-student, non-employees as it deems appropriate.

XI. Recordkeeping and Privacy

1. Contents of Records

The university will retain records relating to investigations of sexual misconduct for a period of not less than seven years. Records will include, but may not be limited to, the following:

- Any determination regarding responsibility, sanctions, or other formal responses after adjudication.
- Any appeal and its outcome.
- The outcome of any informal resolution.
- Any supportive measures implemented or denied under this policy.
- All written materials used by the university in training Title IX Coordinators, investigators, adjudicators, persons who facilitate informal resolution processes, and others involved in proceedings under this policy.

The university will not maintain records of the contents of any informal resolution process, but may retain records reflecting that the process occurred and any final outcome.

No information derived from proceedings under this policy shall be released except as permitted or required by law and university policy. In the context of investigation, adjudication, supportive measures, sanctions, remedies, or informal resolution under this policy, information will be disclosed only to individuals with a genuine need to know.

- Information on risk reduction, recognizing signs of abusive behavior, and avoiding potential attacks.

Additionally, the university will provide appropriate training to all persons serving as coordinators, investigators, adjudicators, appointed advisors, or facilitators of informal resolution under this policy.

The Title IX Coordinator will oversee and monitor the university's training and education efforts to ensure their

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 or 662-325-8124.

REVIEW

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

REVIEWED:

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

08/11/2020
Date

/s/ Nancy Siegert
Chief Human Resources Officer

08/12/2020
Date

/s/ David R. Shaw
Provost and Executive Vice President

08/12/2020
Date

/s/ Regina Hyatt
Vice President for Student Affairs

08/12/2020
Date

/s/ Tracey N. BNanNanN tt