



## **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 domestic violence, sexual exploitation, or stalking 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 or participates in any capacity in proceedings under this policy will not be tolerated and will be independent grounds for disciplinary action.

#### **II. Application and Scope**

This policy governs the university’s response to sexual misconduct, as that term is defined herein. Sexual misconduct includes sexual harassment, sexual assault, sexual exploitation, dating and domestic violence, and stalking.

This policy applies to all members of the university community, including without limitation students, faculty, staff, applicants for admission or employment, and those participating in university programs. The prohibition on sexual misconduct herein applies to all of the above, as well as to guests, contractors, and other visitors. Wherever the terms “employee” or “student” are used herein, they also apply to applicants for employment or admission unless otherwise noted.

This policy 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.

The university is required to follow certain procedural rules in cases where alleged sexual misconduct meets a narrower definition of sexual harassment contained in Department of Education regulations under Title IX of the Education Amendments of 1972. To avoid confusion, this policy refers to such alleged violations

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 of Sexual Misconduct and Title IX Sexual Harassment

#### 1. 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 sexual harassment, sexual assault, sexual exploitation, stalking, and dating or domestic violence.

- ***Sexual Harassment*** is unwelcome conduct of a sexual nature that is sufficiently severe, pervasive, or persistent and objectively offensive that it denies or limits or is likely to deny or limit a reasonable person’s ability to participate in or benefit from university programs, services, opportunities or activities.

Sexual Harassment 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 and objectively offensive 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 and objectively offensive 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 constitutes 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.

## 2. Title IX Sexual Harassment

Title IX Sexual Harassment refers to a particular type of sexual misconduct governed by federal regulations. Most of the rules and procedures in this policy apply equally to sexual misconduct in general and to Title IX Sexual Harassment in particular. Where they differ, these differences are explicitly stated.

Title IX Sexual Harassment is defined as conduct on the basis of sex that falls within one or more of the following categories:

- Quid Pro Quo Harassment occurs when an employee of the university conditions the provision of an aid, benefit, or service of the university upon an individual's participation in unwelcome sexual conduct.
- Hostile Environment Harassment occurs when conduct on the basis of sex is sufficiently severe, pervasive, and objectively offensive, as determined by a reasonable person, that it effectively denies a person equal access to the university's programs or activities.
- Sexual Violence refers to sexual assault, dating violence, domestic violence, or stalking. For purposes of this policy, these terms are defined as follows:
  - a. "Sexual assault" refers to any sexual act directed against another person, forcibly and/or against that person's will, or not forcibly or against the person's will where the victim is incapable of giving consent. This includes rape, sodomy, sexual assault with an object, nonconsensual fondling, incest, and statutory rape, as these terms are defined by the FBI Uniform Crime Reporting System.

Sexual conduct is considered to be against a person's will where that person has not given consent as defined by this policy. Sexual conduct is considered forcible where it occurs by means of physical force or coercion as defined by this policy.

- b. "Domestic violence" refers to any felony or misdemeanor crime of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under applicable domestic violence laws, or by any other person against an adult or youth victim who is protected from that person's acts under applicable domestic or family violence laws.

- 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. Freedom of Expression

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.

## IV. **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.

- Physical 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 participate in sexual activity.

Physical force refers to physical contact with any person, by means of one’s own body or an object, for the purpose of causing bodily harm or injury, or of forcibly constraining movement. 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.

## V. Reporting Sexual Misconduct

The university strongly encourages anyone who has experienced sexual harassment or other 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 MSU’s Office of Survivor Support, which has personnel 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 procedures in cases of sexual misconduct, as well supportive measures 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](mailto:ldh76@msstate.edu); Phone: 662-325-5839.
- **Thomas Bourgeois, Dean of Students.** 1<sup>st</sup> Floor YMCA Building. Email: [thomasb@saffairs.msstate.edu](mailto:thomasb@saffairs.msstate.edu); Phone: 662-325-3611.
- **Ann Carr, Senior Associate Athletic Director.** Email: [acarr@athletics.msstate.edu](mailto:acarr@athletics.msstate.edu); Phone: 662-325-2532.
- **Jackie Mullen, Director of Student Activities.** Email: [jmullen@saffairs.msstate.edu](mailto:jmullen@saffairs.msstate.edu); Phone: 662-325-3917.
- **Joy Graves, University Compliance Officer.** Email: [joy.graves@msstate.edu](mailto:joy.graves@msstate.edu); Phone: 662-325-5839.
- **Nancy Siegert, Chief Human Resources Officer.** 2<sup>nd</sup> Floor McArthur Hall; Email: [nsiegert@hrm.msstate.edu](mailto:nsiegert@hrm.msstate.edu); Phone: 662-325-3717.
- **Stephanie Green, Senior Human Resources Generalist.** 2<sup>nd</sup> Floor McArthur Hall; Email: [sgreen@hrm.msstate.edu](mailto:sgreen@hrm.msstate.edu); Phone: 662-325-3717.
- **Juli Rester, Senior Manager, Human Resources Management.** 2<sup>nd</sup> Floor McArthur Hall; Email: [rester@hrm.msstate.edu](mailto:rester@hrm.msstate.edu); Phone: 662-325-3717.

In addition to these officials, many MSU personnel are required by university policy to convey reports of sexual misconduct to the proper authorities on campus. These personnel are called "Mandatory Reporters" 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 they are 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 this policy, the university's policy on Discrimination, Harassment, and Retaliation (Operating Policy 03.03), or both. 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.

However, in all cases—regardless of the relevant policy—employees should feel free to 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. Employees who do have such a duty are called Mandatory Reporters. To ensure that appropriate action is taken, the university strongly recommends that reports be submitted to the personnel listed in this policy.

***Who are MSU's Mandatory Reporters?***

All university employees are considered Mandatory Reporters for purposes of this policy unless specifically exempted herein, or specifically exempted via the procedure outlined below. If you are uncertain whether you or someone else is a Mandatory Reporter, the Title IX Coordinator can help you make that determination.

***Which employees are exempt from mandatory reporting?***

Confidential Employees. Certain employees are specifically exempted from Mandatory Reporter 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 a student enrolled in a course taught by the employee.

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 Mandatory Reporter of sexual misconduct?***

When a Mandatory receives a report of sexual misconduct, he or she is required to report that allegation to the Title IX Coordinator. This means that the Mandatory Reporter **must** inform the Title IX Coordinator, even if the person who experienced the alleged misconduct asks the employee not to do so.

Statements concerning sexual misconduct that are directed to groups generally do not constitute reporting for purposes of this policy, even if a Mandatory Reporter 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, or statements on social media. If a person wishes to seek assistance from the university, they should speak directly to a Mandatory Reporter in a one-on-one setting.

***Are there any exceptions to a Mandatory Reporter's duty to report?***

There is one narrow exception to the reporting requirement for Mandatory Reporters. If the alleged sexual misconduct is harassment of an employee who is not a student **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 Mandatory Reporter 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 Mandatory Reporter?***

Mandatory Reporters 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 Mandatory Reporter 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 Mandatory Reporter 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 investigations are prohibited.*** University employees, departments, organizations, and other units must not undertake their own independent investigations of sexual misconduct in lieu



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.

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

The university will endeavor to keep reported information about alleged sexual misconduct confidential to the greatest extent reasonably possible, but may be required to share information with appropriate individuals—including but not limited to the accused party, university investigators, and university adjudicators—in order to resolve the matter, and to ensure the safety of members of the university community. Additionally, as discussed more fully below, there may be instances in which the university is required by laws or regulations to disclose certain information.

***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

While the university strongly recommends that individuals who know of or have experienced sexual misconduct report to the Title IX Coordinator, options exist for those who seek confidential assistance without triggering a formal investigation.

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 Recovery Kit (PERK) to seeking supportive measures from the university.

To contact OSS between 8 a.m. and 5 p.m. Monday through Friday, call 662-325-5795 or visit the office in person on the second floor of the YMCA Building at 195 Lee Boulevard.

### ***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.

### ***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.

### ***Employee Assistance Program***

MSU's Employee Assistance Program (EAP) can be reached at 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 MSU Ethics Point, a comprehensive and confidential online reporting tool. An online report can

be completed via the Ethics Point 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 Ethics Point. Further, anonymous reporting via Ethics Point does not constitute a formal complaint of sexual misconduct 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 investigate, 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 result in an initial notification to the Title IX Coordinator, as outlined below. Reporting to other law enforcement agencies will not trigger such notification 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.

## **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, testifying, assisting, or cooperating with an investigation or proceeding. Constitutionally protected speech, without more, does not constitute retaliation under this policy. Sanctions imposed for making a deliberately false report or providing false information in bad faith in the course of an investigation or hearing do not constitute retaliation.

The university maintains the right to require students and employees to cooperate in good faith with investigations, including investigations under this policy. Consequently, sanctions imposed by the university in response to an individual's refusal to participate or cooperate with an investigation of sexual misconduct generally are not considered retaliation.

However, in matters where allegations meet the definition of Title IX Sexual Harassment, federal regulations specifically prohibit institutions from penalizing non-participation. Consequently, in such cases, no sanction will be imposed by the university in response to an individual's refusal to testify, assist, or otherwise participate in any investigation, proceeding, or hearing unless expressly. Application of procedural rules contained herein on the admissibility of statements or other evidence does not constitute a sanction for this purpose.

## **VII. Intentionally 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 or other information is provided in bad faith when the person making it actually knew it was false or made it with reckless disregard for the truth. Information is not provided in bad faith merely because an adjudicator reaches a contrary conclusion or outcome.

Where a false report or statement has been made in bad faith, formal disciplinary action by the university against the person making it is not retaliation within the meaning of this policy.

## **VIII. Investigation and Adjudication**

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

### **1. Initial Notification**

The university's duty to respond begins when the Title IX Coordinator is notified of alleged sexual

misconduct. Upon receiving such notification, the Title IX Coordinator<sup>1</sup> 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 nonetheless warrants investigation under this policy. In such cases, the Title IX Coordinator will initiate and sign the formal complaint. In such cases, the alleged victim—not the Coordinator—is still considered the complainant, and will continue to receive any notifications required hereunder. Alternatively, the Coordinator may determine that the matter warrants investigation under another university policy, and may refer the matter to appropriate personnel.

---

<sup>1</sup> With respect to any procedural step or other duty described herein, the term “Title IX Coordinator” refers to the Coordinator or his or her designee(s).

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

Upon receipt of a formal complaint, the university will provide written notice to the accused party and the complainant. This notice will include a description of the allegations potentially constituting sexual misconduct, including the parties involved, the date, and the location, if these details are known. The written notice will inform the parties of the following:

- Respondents are presumed not responsible until proven otherwise, and a determination regarding responsibility is made at the conclusion of the investigation and adjudication process.
- Parties may have an advisor of their choice who may be, but is not required to be, an attorney, and the university will provide an advisor at no charge upon written request.
- Parties will have an equal opportunity to inspect and review evidence.
- Supportive measures are available and may be requested by contacting the Title IX Coordinator.
- It is a violation of MSU policies to knowingly or recklessly make false statements or submit false information in connection with the investigation or adjudication process, and such conduct is subject to disciplinary action.

If in the course of an investigation, the university decides to investigate any separate and distinct allegation of sexual misconduct not included in the initial notice, it will provide written notice of the additional allegation(s) to the parties.

#### 5. Emergency Removal

In rare cases where the university has reason to believe a party to a sexual misconduct investigation poses an immediate threat to the physical health or safety of another individual, the university may remove that party from campus, or from any program, activity, or facility, on an emergency basis.

Removal of a student will occur only where the Dean of Students determines that the student poses an immediate threat to the physical health or safety of another person following an individualized safety and risk analysis. Where a student is removed by these means, they will receive notice and an opportunity to challenge the decision as promptly as is reasonably possible. The Dean of Students shall have final authority to determine whether emergency removal is appropriate.

Nothing in this policy restricts the ability of the university to place an employee on leave pending the outcome of an investigation of sexual misconduct or other issues.

#### 6. Investigation

The Title IX Coordinator or their designee will investigate the allegations raised in a formal complaint. The Coordinator will make reasonable good faith efforts to obtain relevant evidence, both potentially inculpatory and exculpatory.

### ***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 that an investigator, advisor, or other personnel involved in the investigation process has a conflict of interest or bias that would prevent him or her from serving fairly and impartially, they should promptly inform the Title IX Coordinator. If a party believes the Title IX Coordinator has such a conflict or bias, they should inform the University Compliance Officer. The appropriate official will review the matter and take remedial action where appropriate, which may include assigning alternate personnel.

### ***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 responsibility and will issue a proposed set of sanctions and/or remedies.

If all parties agree in writing to waive a live hearing on the matter and accept the proposed sanctions and/or remedies, the matter will be concluded and not subject to appeal. If all parties do not agree, the Coordinator will schedule a hearing before the adjudicator to determine the appropriate sanction and/or response, and to decide any remaining allegations or other issues.

Where a respondent wishes to accept responsibility after a live hearing has commenced, it is his or her responsibility to clearly state as much to the adjudicator. An adjudicator may consider a party's acceptance of responsibility as one factor in determining the appropriate sanctions and/or responses.

### **7. Investigative Report**

At the conclusion of the investigation, the Title IX Coordinator will prepare an investigative report summarizing relevant policy provisions, undisputed facts, disputed factual questions, and potentially relevant evidence including potential witness testimony and potential exhibits to be introduced at a hearing.

### ***Scope of Recommendations***

The report may make recommendations as to what testimony, exhibits, or other evidence are or are not relevant to a determination regarding responsibility, but the final authority for such determinations will rest with the adjudicator. The report will not take any position or make any recommendation as to the ultimate question of responsibility or non-responsibility.

### ***Distribution of Preliminary Report***

Not less than twenty-one calendar days prior to a hearing, the Title IX Coordinator will provide a preliminary copy of the investigative report to each party and their respective advisors, along with a copy of any relevant documents or exhibits. The parties will have ten calendar days to submit a written response noting any objections, proposed corrections, or proposed additions.

### ***Final Report***

The Coordinator will consider any written responses from the parties in preparing a final version of the investigative report, which will be provided to the parties, their advisors, and the adjudicator at least five calendar days prior to the hearing.

### **8. Dismissal and Referral Under Other Policies**

Allegations of sexual misconduct will be investigated initially under the procedures outlined in this policy. In some cases, the evidence uncovered may indicate that dismissal or referral under other policies is appropriate.



### ***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 this policy. Where a complaint or allegation is dismissed on its merits, and the dismissal is not reversed via appeal, this precludes any formal discipline or sanction under this policy for the covered conduct, unless additional information is subsequently revealed that the Title IX Coordinator determines could not have been reasonably known by the relevant party and would materially alter the nature or severity of the allegations.

### ***Discretionary Dismissal***

Where the Title IX Coordinator determines that specific circumstances prevent the university from gathering evidence sufficient to reach a determination as to a complaint or allegation, the Coordinator may at his or her discretion dismiss the complaint or allegation.

Discretionary dismissal does not preclude the filing of a future complaint on the same subject matter, which may be investigated where the Title IX Coordinator determines that specific circumstances preventing investigation have changed.

### ***Voluntary Dismissal***

If at any time prior to a determination on responsibility a complainant notifies the Title IX Coordinator in writing of his or her desire to withdraw the formal complaint or any allegation therein, the Coordinator may at his or her discretion dismiss the complaint or allegation.

The university will give careful consideration to a complainant's request to dismiss a formal complaint, but may determine that dismissal is inappropriate if it would impair the university's ability to ensure a safe and non-discriminatory environment. Factors considered in making this determination 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.

### ***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 grounds for the decision, and the availability of and procedure for appeal.

### ***Appeal of Dismissal***

Where a party feels that a decision to dismiss has been made in error, he or she may appeal the dismissal under the procedures set forth in this policy.

## **9. Hearings**

The determination of responsibility or non-responsibility for Title IX Sexual Harassment and other sexual misconduct matters will be made via a live hearing process.

### ***Standard of Proof***

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. Unless and until sufficient evidence is presented, the respondent is presumed not responsible.

### ***Adjudicators***

The determination of responsibility or non-responsibility is made by the adjudicator, which may be an individual or a panel of individuals selected by the university. The adjudicator will have received appropriate training on university policies, procedures for fair and impartial decision-making, pertinent

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.

Questions and evidence about a complainant's sexual predisposition or prior sexual behavior are not relevant, unless offered to prove that someone other than the respondent committed the alleged conduct, or such questions or evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.

### ***Testimony***

All parties and witnesses are expected to be present and to provide truthful and accurate testimony at any hearing under this policy. It is a violation of this policy to knowingly or recklessly make false statements or submit false information in connection with the investigation or adjudication process, and such conduct is subject to disciplinary action by the university.

- *Title IX Sexual Harassment matters.* In matters classified as Title IX Sexual Harassment under this policy, a party or witness's failure to testify or submit to cross-examination means that no statement by that party or witness may be considered in reaching a determination of responsibility.

Consequently, if at any point during a hearing, a party or witness indicates a refusal to answer any question determined to be relevant by the adjudicator, the entirety of that party's testimony and any

prior statements will be disregarded for purposes of the determination of responsibility, and the matter will be adjudicated based on the remaining evidence.

The adjudicator may not base a determination of responsibility or non-responsibility solely on the fact that a party or witness refuses to testify or answer cross-examination questions, but may consider such refusal as one factor and/or consider the absence of sufficient evidence due to other statements being excluded from consideration.

- *Other sexual misconduct matters.* In matters classified as sexual misconduct but not Title IX Sexual Harassment under this policy, the response to a refusal to testify or answer questions at a hearing shall be at the discretion of the adjudicator. Additionally, parties or witnesses who refuse to testify or cooperate in good faith with an investigation may be subject to disciplinary action under university policies.

### ***Hearing Advisors***

Each party 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. Because cross-examination questions at a live hearing may be asked only by an advisor, and not by the parties themselves, it is strongly recommended that each party secure the participation of an advisor at the hearing stage.

Where a party does not have an advisor for the hearing, the university will provide one at no charge upon written request to the Title IX Coordinator. Where a party has requested a university-appointed advisor for the investigation stage, the university will automatically appoint an advisor for the hearing stage. Otherwise, it is the responsibility of the party to submit a request for a hearing advisor as early as possible. If the request is submitted less than ten calendar days prior to a scheduled hearing date, the university cannot guarantee the availability of an advisor.

In all cases, it remains the responsibility of the party to inform the advisor and secure their attendance at any hearing or other meeting.

### ***Remote Hearings***

Hearings normally will occur in-person with the parties, advisors, and adjudicator in the same location. However, upon timely written request, the university will permit any party to participate remotely by means of videoconferencing or similar technology. In such cases, the arrangement of the videoconference must be such that all parties and the adjudicator can see and hear any party or witness while that party or witness is testifying.

### ***Recording of Hearings***

Hearings under this policy shall be recorded via audio or audiovisual means and maintained as part of the file. The recording shall be made available to the parties for inspection and review upon request. Unauthorized copying or recording of hearing proceedings is prohibited.

## **10. Determination as to Responsibility**

Upon conclusion of the hearing, the adjudicator shall issue a written determination regarding responsibility or non-responsibility for the charges. This determination will include:

- 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 complainants or respondents generally, or an individual complainant or respondent specifically, on the part of the Title IX Coordinator, investigator, or adjudicator.

### ***Appellate Procedure***

Either party may appeal by submitting a written notice to the Title IX Coordinator within seven calendar days of issuance of the written determination on responsibility or the notice of dismissal. Upon receipt of a notice of appeal, the Coordinator will notify all parties in writing that an appeal has been filed.

The Coordinator will invite parties to submit written statements of their positions on appeal. The Coordinator shall have discretion to determine the order and length of statements and other procedural matters, provided that all affected parties will have equal opportunity to submit relevant information.

### ***Appellate Adjudicators***

In matters where the accused party is a student, appeals shall be heard by the Vice President for Student Affairs or their designee. In matters where the accused party is a university employee, appeals shall be heard by the Provost and Executive Vice President or their designee. In cases where the accused party is both a student and a university employee, the Title IX Coordinator shall determine in which capacity the allegations against the accused primarily arose, and shall assign the appeal accordingly.

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 the Title IX Coordinator concerning policy or procedural matters or other university personnel as appropriate, but should not confer with parties, witnesses, investigators, or the hearing adjudicator.

The appellate adjudicator may (1) affirm the decision, sanction, or remedy in full or in part; (2) reverse any ruling and remand the matter for further proceedings; and/or (3) in cases where an appellate ruling leaves no material questions of fact, render a final decision as to responsibility, sanctions, or remedies.

The adjudicator will issue a written decision explaining the outcome of the appeal and the rationale. That decision will be transmitted to the Title IX Coordinator, who will provide a copy to all parties simultaneously. The decision of the appellate adjudicator is final and not subject to further appeal.

### 12. Timeframe

Absent extenuating circumstances, the university will strive to conduct a full investigation of a complaint of sexual misconduct and adjudicate the complaint within ninety calendar days of the filing of the formal complaint.

## **IX. Informal Resolution**

In some instances, the parties may prefer to address sexual misconduct through informal means, such as mediation. Where appropriate, the university will make reasonable efforts to facilitate this process.

### 1. Requesting Informal Resolution

Parties interested in informal resolution should communicate that request to the Title IX Coordinator. A request for mediation or other informal resolution may be made in writing by either party at any point after a formal complaint is filed and prior to a determination on responsibility.

### 2. Determination of Appropriateness

If a party requests informal resolution and the Title IX Coordinator determines it is potentially appropriate, the Coordinator will provide all parties with written notice of the request, including a description of the allegations covered, an explanation that informal resolution is strictly voluntary and must be agreed to by all relevant parties, and an explanation of the relevant provisions of this section. Informal resolution will not proceed unless all relevant parties indicate their agreement in writing after receiving this notice.

Informal resolution is not permitted where there is an allegation that a university employee engaged in sexual misconduct toward a student. The Coordinator shall retain discretion to deny any request for informal resolution or to terminate such proceedings at any point if he or she determines that they are no longer appropriate.

### 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

Once an informal resolution process has begun, any party is free to withdraw at any time prior to the conclusion of the process, and should communicate that request to the Title IX Coordinator.

The process concludes when the Title IX Coordinator issues a written notice to the parties that a resolution has been reached, or alternatively that no resolution can be reached. Where no resolution can be reached or where any necessary party withdraws, the university will resume the formal complaint process.

Where a resolution is reached and agreed to in writing by the parties, this will preclude any formal discipline or sanction under this policy for the covered conduct, unless additional information is subsequently revealed that the Title IX Coordinator determines could not have been reasonably known by the relevant party and would materially alter the nature or severity of the allegations.

## **X. Sanctions and Remedies**

Sanctions for violations of this policy must be determined based on the facts of each individual case. Sanctions are distinct from non-punitive supportive measures, such as no-contact orders or changes in housing assignments. Sanctions under this policy may be implemented only after the conclusion of a live hearing, or after voluntary acceptance of responsibility by a respondent.

### 1. Potential Sanctions

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.
- 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 university policies, 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 university policies, 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.

## 2. Responses in Addition to Formal Sanctions

Any formal sanctions by the university under this policy must be determined via the procedures herein. University employees, departments, organizations, and other units must not undertake their own investigations of sexual misconduct in lieu 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 other units or organizations in assessing an individual's fitness for employment, membership, or participation.

### ***Student Organizations***

Nothing in this policy prevents any university-recognized club, team, or other voluntary student organization from considering either a finding of responsibility or the underlying facts or allegations in determining an individual's fitness for membership or participation.



## ***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.

## 2. 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.

## 3. FERPA Privacy Protections

Under the Family Educational Rights and Privacy Act (FERPA), identifying information about a complainant, respondent, or reporting party 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.

## 4. 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.

## **XII. 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.

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 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.

### **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, 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 are encouraged to follow the reporting procedures contained in Operating Policy 03.03. Alternatively, if workplace conduct does involve sexual assault or other violence, employees are encouraged to 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.

#### 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.

#### **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. Baham  
Director  
Institutional Research and Effectiveness

08/12/2020  
Date

/s/ Joan Lucas  
General Counsel

08/12/2020  
Date

**APPROVED:**

/s/ Mark Keenum  
President

08/12/2020  
Date