Sexual Misconduct

Summary/Purpose: To provide students notice about their obligation to refrain from acts that may be considered sexual misconduct.

INTRODUCTION
The University of Mississippi strives to create a respectful, safe, and non-threatening environment for its students. This policy describes prohibited conduct and establishes procedures for responding to sexual misconduct incidents, where the accused is a student. These incidents include sexual assault, sexual harassment and other unwelcome behaviors as explained below. Title IX of the Education Amendments of 1972 prohibits discrimination based on sex in education programs and activities; the University’s Title IX Coordinator oversees policies and procedures that apply to complaints alleging sex discrimination (including sexual harassment, sexual assault, and sexual violence) by employees, students or third parties.

The Title IX Coordinator investigates sexual misconduct by students. Responsibilities performed in this policy by “the Title IX Coordinator” may be performed by the Title IX Coordinator, or by, another University employee trained by, and acting under the supervision of, the Title IX Coordinator.

The investigation and resolution of complaints involving a student(s) accused of sexual misconduct are governed by this policy, while complaints of sexual misconduct by University employees are governed by Policy Number ACA.EO.100.010.

Students who believe they have been a victim of sexual misconduct may submit a complaint against the accused in writing or in person to the Title IX Coordinator, 270 D Martindale Hall (915-7045). Any University faculty or staff member, except those providing counseling or health care services through the University Counseling Center, Student Health Services, and/or Psychological Services Center, who is notified by a student of an incident of sexual misconduct by another student is to report the incident immediately (but not later than three calendar days) to the Title IX Coordinator.

Students also are encouraged to immediately contact the University Police Department (662-915-4911) if they have been sexually assaulted and to seek immediate medical attention. Students should seek medical attention even if they do not wish to pursue criminal charges or otherwise pursue a complaint against their attacker.

RELATIONSHIP BETWEEN STUDENT CONDUCT ADJUDICATION AND THE UNIVERSITY’S TITLE IX RESPONSIBILITIES
The adjudication of complaints of sexual misconduct is only a part of the University’s responsibilities under Title IX when a student has experienced sexual harassment by another student. While the University Judicial Council may have a hearing and pronounce sanctions for a student who violates the sexual misconduct policy, the University has a broader responsibility to respond to the needs of student victims. Therefore, regardless of whether a charge is brought against a student through the student conduct process, the Title IX Coordinator will evaluate each case to determine whether the overall response of the University (including resources
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provided or offered to the victim and interim steps taken to protect the victim and others) satisfies the requirements of Title IX. Additionally, the Title IX Coordinator does not look only at individual cases of discrimination, but also at the University environment as a whole to evaluate the campus climate for gender equality.

**VICTIM CONFIDENTIALITY**
When a student is the victim of sexual misconduct, the Title IX Coordinator first will request that the victim give consent for an investigation to begin. If a victim requests confidentiality or asks that the complaint not be pursued, the Title IX Coordinator will take all reasonable steps to investigate and respond to the complaint consistent with the victim’s request; however, the Title IX Coordinator may determine that the circumstances of the sexual misconduct incident are so severe or that the circumstances otherwise indicate there is an on-going danger to the victim and/or members of the University community such that action must be taken on the part of the University beyond the action requested by the victim.

Consistent with Title IX, the University prohibits retaliation against any individual who makes a report of sexual misconduct or who cooperates with an investigation into sexual misconduct. Retaliation against such an individual is a violation of this policy and is subject to discipline.

**POLICY STATEMENT**
The University prohibits sexual misconduct in any form, including sexual assault or sexual abuse, sexual harassment, and other forms of nonconsensual sexual conduct. Students should be able to live, study, and work in an environment free from sexual misconduct.

It is the position of the University that sexual misconduct in any form will not be excused or tolerated. Criminal, civil and University disciplinary processes are available to a student with a complaint. The University is committed to prompt, effective and fair procedures to investigate and adjudicate reports of sexual misconduct and to the education of the University community about the importance of responding to all forms of sexual misconduct. Special emphasis is placed on the rights, needs, and privacy of the student with the complaint, as well as the rights of the accused. At the same time, the University adheres to all federal, state, and local requirements for intervention and crime reporting related to sexual misconduct.

**INTERIM STEPS**
The investigation into an incident of sexual misconduct is only one part of the University’s prompt and effective response on behalf of the victim. For a listing of the resources available to sexual assault and sexual misconduct victims, please visit the Violence Prevention Office website [http://violenceprevention.olemiss.edu](http://violenceprevention.olemiss.edu).

The Title IX Coordinator may recommend the immediate implementation of additional steps to provide for the safety of the victim or others, to avoid possible retaliation, or to prevent further occurrence of any discrimination or discriminatory effects. These steps may include, but are not limited to, mutual “no contact” letters, changes in course schedules and changes in housing assignments. Any such interim step taken by the Title IX Coordinator is not appealable, but such
steps may be modified by the Title IX Coordinator upon final resolution of a complaint of sexual misconduct.

**EFFECTIVE CONSENT IS:**

Effective consent is the basis of this policy because effective consent maintains the value that all persons have the right to feel respected, acknowledged, and safe during sexual activity.

Sexual intimacy requires that all participants consent to the activity. Consent between two or more people is defined as an affirmative agreement – through clear actions or words – to engage in sexual activity. The person giving the consent must act freely, voluntarily, and with an understanding of his or her actions when giving the consent.

Lack of protest or resistance does not constitute consent, nor does silence mean consent has been given. Relying solely on non-verbal communication can lead to misunderstanding. Persons who want to engage in sexual activity are responsible for obtaining consent – it should never be assumed.

A prior relationship or prior sexual activity is not sufficient to demonstrate consent.

Consent must be present throughout the sexual activity – at any time, a participant can communicate that he or she no longer consents to continuing the activity. If there is confusion as to whether anyone has consented or continues to consent to sexual activity, it is essential that the participants stop the activity until the confusion can be clearly resolved.

**EFFECTIVE CONSENT IS NOT:**

Effective consent cannot result from force, or threat of force, coercion, fraud or intimidation. In addition, an incapacitated person is not able to give consent. The use of force to obtain sexual access or to induce consent violates this policy whether the force is physical in nature, violent, or involves threats, intimidation or coercion.

- **Physical force** includes but is not limited to: hitting, kicking, and restraining. Physical force means someone is physically exerting control of another person through violence.

- **Threatening** someone to obtain consent for a sexual act is a violation of this policy. Threats exist where a reasonable person would have been compelled by the words or actions of another to give permission to sexual activity to which he or she otherwise would not have consented.

- **Intimidation** is an implied threat. Intimidation exists when a reasonable person would feel threatened or coerced even though there may not be any threat made explicitly. Intimidation is evaluated based on the intensity, frequency, or duration of the comments or actions.

- **Incapacitation:** It is a violation of this policy if the initiator has sex with someone the initiator knows, or reasonably should know, to be incapacitated by alcohol, drugs, sleep
or illness. A person who is unconscious, unaware, or otherwise physically helpless cannot give effective consent to sexual activity. Someone is incapacitated when he or she cannot understand who, what, when, where, why, or how, with respect to the sexual interaction.

- **Age of Consent:** According to Mississippi Code §97-3-65, effective consent can never be given by persons under the age of 14. Students who are at least 17 years old cannot receive effective consent from anyone between the ages of 14 and 16, if they are younger by more than 36 months.

**PROHIBITED CONDUCT:**
Sexual misconduct is a broad term encompassing any sexual behavior that was committed without effective consent. Sexual misconduct may vary in its severity and consists of a range of behaviors. The requirements of this policy apply regardless of the sexual orientation, sexual identity, or preference of individuals engaging in sexual activity.

The use of alcohol or other drugs never excuses behavior that violates this policy.

The following descriptions represent sexual behaviors that violate The University of Mississippi’s community standards and values of respect, civility, and personal integrity. These behaviors are serious violations and represent a threat to the safety of the University community.

1. **Sexual Penetration:**
   Sexual intercourse, or sexual penetration, however slight, with any object or body part without effective consent. This includes penetration by a person of any gender upon another person of any gender.

2. **Sexual Touching:**
   Any intentional touching of intimate body parts without effective consent. Sexual touching includes bodily contact or contact made with an object.

3. **Sexual Harassment:**
   Harassment of a sexual nature that is so objectively offensive, pervasive, or severe that it effectively denies the victim access to the University’s resources and opportunities, unreasonably interferes with the victim’s work or living environment, or deprives the victim of some other protected right.

4. **Sexual Exploitation:**
   Sexual exploitation occurs when a student takes non-consensual, unfair, or abusive advantage of another sexually for his or her own advantage or benefit, even though that behavior does not constitute one of the other sexual misconduct offenses. Examples include, but are not limited to:
   - Non-consensual **video audio taping, or photographing** of sexual activity even if the sexual act is consensual.
   - Non-consensual posting, publishing, sharing, or displaying photo, audio, or video of sexual activity even if the activity was originally recorded with effective consent.
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- Voyeurism is a form of sexual exploitation in which one individual engages in secretive observation or non-consensual video or audio taping of another for personal sexual pleasure.
- Any disrobing of another or exposure to another without effective consent.

5. Stalking
   Stalking is sexual misconduct when the content of the messages or the nature of the physical stalking is of a sexual nature.

6. Attempted Act/Accomplice to Sexual Misconduct:
   Attempts to commit sexual misconduct also are prohibited under this policy, as is aiding in the commission of sexual misconduct as an accomplice.

7. Use of Drugs and/or Alcohol to Induce Incapacity:
   This policy also prohibits sexual activity or attempted sexual activity with someone whose incapacity results from the taking of a drug or alcohol. Possession, use, and/or distribution of any “date-rape” drugs or substances, including but not limited to Rohypnol, Ketamine, and GHB, are prohibited, and administering or attempting to administer any of these drugs or substances, including alcohol, to someone else for the purpose of inducing incapacity is a violation of this policy. A student may be charged with a violation of this policy even if no sexual activity took place.

8. Retaliation:
   Pursuant to Title IX, retaliation against an individual who initiates a sexual misconduct complaint, participates in an investigation, or pursues legal action, is prohibited. Independent action may be taken against anyone engaging in retaliation including individuals who are acting on behalf of the accused, with or without the knowledge of the accused. Retaliation may occur in person or electronically.

   In an effort to avoid retaliation, prevent recurrence of any discrimination or discriminatory effects, and provide for the safety of the victim(s) and others, the University will implement all necessary remedies during an investigation period and/or at the conclusion of an investigation. These remedies may include, but are not limited to: mutual “no contact” letters, changes in course schedules, and changes in housing assignments.

SANCTIONS
   A wide range of sexual misconduct is prohibited by this policy. As such, dependent upon the facts unique to each case, sanctions may range from a verbal reprimand to expulsion from the University. For a non exhaustive list of sanctions and their definitions please reference University of Mississippi policy DSA.SC.300.020, Disciplinary Sanctions.

VICTIM AMNESTY
   The use of alcohol or drugs by either party in conjunction with a sexual assault does not alleviate responsibility on the part of the accused or diminish the serious nature of the
offense. When alcohol or drugs are involved, a victim will not be found responsible for alcohol or drug violation and should not let his or her use of alcohol or drugs be a deterrent to reporting the incident.

For a listing of resources available to students, please visit the Violence Prevention Office website http://violenceprevention.olemiss.edu/

**Sexual Misconduct Student Conduct Adjudication Process:**

Complaints of sexual misconduct by a student against another student are governed by Title IX and are, therefore, investigated by the Title IX Coordinator. The adjudication of sexual misconduct cases shall follow the process outlined in DSA.SC.300.001 through DSA.SC.300.015, Student Conduct Process, unless otherwise outlined below. The standard of proof for all cases involving sexual misconduct will be based upon the University’s established standard of preponderance of the evidence.

The time frames indicated below are maximums. All days are “business” days, unless otherwise noted. Especially in cases of sexual assault, the University will make every effort to move the case promptly through the process so long as such speed does not interfere with the quality of the investigation or the hearing.

1. In the Student Conduct process, cases of sexual misconduct will be adjudicated within 60 days of the date that the Title IX Coordinator is notified of the complaint, unless there are extenuating circumstances (i.e. uncooperative witnesses, break periods and periods when the University is closed). The Title IX Coordinator will comply with law enforcement requests for cooperation and such cooperation may require the Title IX Coordinator to temporarily suspend the fact-finding aspect of the investigation while law enforcement is in the process of gathering evidence. The University promptly will resume its investigation as soon as notified by the law enforcement agency that it has completed the evidence gathering process, which typically takes three to ten calendar days, although the delay in the University’s investigation will be longer in certain instances.

a. Information Gathering and Determination of Charge/s: The Title IX Coordinator will investigate a complaint of sexual misconduct within 40 days of receiving the complaint. The degree to which a victim of sexual misconduct participates in the investigation and subsequent hearing will be up to the victim to decide; however, when a victim does not wish to be a part of the investigation, wishes to remain anonymous, or refuses to provide information to the Title IX Coordinator, the Title IX Coordinator may be prevented from doing a full investigation. The Title IX Coordinator will compile all evidence, including the testimony of various witnesses, into a report. The report will not contain findings of fact as to whether a violation of the sexual misconduct policy actually occurred; however, the Title IX Coordinator will decide whether there is sufficient evidence of sexual misconduct such that the complaint needs to go forward for a hearing by the University Judicial Council. If the Title IX Coordinator does not find there is
sufficient evidence to proceed with the hearing, the victim may still request a hearing before the University Judicial Council.

b. Pre-hearings: Within 45 days, the University will conduct individual pre-hearings for the victim and the accused student(s). Sanctions may be given to the accused during the prehearing phase, but only if the Title IX Coordinator, the victim and the accused all agree on appropriate sanctions. If all three parties agree on appropriate sanctions, this decision is not appealable.

c. Hearing Decision: Within 60 days, the University will render a hearing decision to include findings of “in-violation” or “not in violation” of each charge and any appropriate sanctions. The University will attempt to notify, simultaneously, both the victim and accused, in writing, within 24 hours of this decision.

d. Appeal: The victim and/or the accused may appeal the findings and/or the sanctions of the University Judicial Council. The process for appeal is outlined within University of Mississippi policy DSA.SC.300.010, Student Conduct Process. For cases involving sexual misconduct, both the victim and accused will be notified in writing of the appellate decision within 12 days of receiving the appeal.

2. During the investigation phase, but no later than 30 days after learning of the complaint, the Title IX Coordinator may decide that the case is suitable for informal resolution, or mediation, between the parties; however, mediation will not be used in cases where sexual assault or other violence is alleged, or in cases where the Title IX Coordinator believes there to be an inequity of power between the parties. The Title IX Coordinator, the victim and the accused must all agree to engage in mediation. The Title IX Coordinator will appoint a mediator, and the mediation will be conducted within 10 days of the parties’ agreement to mediate. If the parties reach an agreement during mediation, that agreement will be put in writing and will be binding upon the parties. Violation of the written agreement will result in the student being charged with Disregard for University Authority, DSA.SC.200.010 and may result in a reinstatement of the charge for sexual misconduct. If the parties are unable to reach an agreement, the case will be turned back over to the Title IX Coordinator to complete the investigation.

3. The victim and the accused have the right to have an advisor of their choice present at any point of the student conduct process.

4. The victim and the accused will have individual pre-hearing meetings to discuss their rights, the student conduct charges and the hearing process. The accused will not have the opportunity to agree to sanctions during the pre-hearing (and thus avoid a hearing before the Judicial Council) unless both the Title IX Coordinator and the victim have already agreed that the suggested sanctions are appropriate. If the sanctions are then agreed to by the accused, then neither party may appeal.

5. A five member board will be selected by the University Judicial Council Chair and the Student Conduct administrator after both the victim and accused have the opportunity to see a full list of Council Members and request recusal of any they have reason to believe are biased.

6. The victim may choose to be present throughout the entire hearing.
7. The victim may choose to participate in the hearing through the means of technology from an off-site location or at the hearing location separated from the accused by a barrier.
8. The victim’s refusal to be present or participate in the hearing will not prevent the hearing from proceeding as long as there is other evidence of the sexual misconduct.
9. The Title IX Coordinator may be called as a witness and may present evidence found during the course of the investigation, including the testimony of individuals interviewed during the investigation. Because the University Judicial Council is the finder of fact, the Title IX Coordinator will not be asked whether the accused acted in violation of this policy, but the Title IX Coordinator may comment on inconsistencies found during the investigation and on the credibility of witnesses interviewed.
10. All questions and answers will be directed to the University Judicial Council Chair.
11. The victim and accused may give closing statements.
12. The victim may submit an impact statement that will be taken into consideration only if there is a finding of “responsible” for any sexual misconduct charge.
13. The decision of the council and sanctions will be determined within 48 hours of the hearing completion.
14. The victim and accused will be notified of the council’s finding concurrently. Additionally, the victim and accused will receive formal notification of the outcome in writing. The same notification process will be followed for all cases under appeal.

The victim and the accused both have the right to appeal the decision of the University Judicial Council as outlined in part six of University of Mississippi policy, DSA.SC.300.010, Student Conduct Process, as modified by this policy.