

Sexual Misconduct DSA.SC.200.075

Summary/Purpose: To promote a community of learning dedicated to nurturing excellence and intellectual inquiry and provide students notice about their duty to respect the dignity of each person by refraining from 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 respondent (the accused) is a student. The investigation and resolution of complaints involving a respondent 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.

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.

Community members who believe that they have experienced potential sexual misconduct from a student may submit a complaint against the respondent in writing or in person to the Title IX Coordinator, 270 D Martindale Hall (915-7045). Any University faculty or staff member, except those who work or volunteer in the on campus Violence Prevention Office and those with statutory privilege, including but not limited to 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. Individuals who work or volunteer in the on campus Violence Prevention Office, including front desk staff and students, can generally talk to a complainant without revealing any personally identifying information about an incident to the University. A complainant can seek assistance and support from these individuals without triggering a University investigation that could reveal the complainant's identity or that the complainant has disclosed the incident.

While maintaining a complainant's confidentiality, the Violence Prevention Office must report the nature, date, time, and general location of an incident to the Title IX

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Coordinator. This limited report – which includes no information that would directly or indirectly identify the complainant – helps keep the Title IX Coordinator informed of the general extent and nature of sexual violence on and off campus so the coordinator can track patterns, evaluate the scope of the problem, and formulate appropriate campus-wide responses. Before reporting any information to the Title IX Coordinator, these individuals will consult with the complainant to ensure that no personally identifying details are shared with the Title IX Coordinator.

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A complainant who is requesting confidentiality or privacy must understand that, if the complainant wants to maintain confidentiality or privacy, the University will be unable to conduct an investigation into the particular incident or pursue conduct action against the Respondent. Even so, the Violence Prevention Coordinator will still assist the complainant in receiving other necessary protection and support, including, but are not limited to, academic accommodations; “no contact” letters; changes in course schedules and changes in housing assignments; and disability, health, and/or mental health services.

A complainant who at first requests confidentiality may later decide to file a complaint with the school or report the incident to local law enforcement, and thus have the incident fully investigated.

While the Violence Prevention Office may maintain a complainant’s privacy within the University, it may have reporting or other obligations under state law including an obligation to respond to lawfully issued subpoenas.

If the Violence Prevention Coordinator determines that the Respondent(s) pose(s) a serious and immediate threat to the University community the University Police Department may be called upon to issue a timely warning to the community. Any such warning should not include any information that identifies the complainant.

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 a respondent.

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 a hearing board 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

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the needs of student complainants. 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 provided or offered to the complainant and interim steps taken to protect the complainant 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.

PRIVACY

When a student is the complainant of sexual misconduct, the Title IX Coordinator first will request that the complainant cooperate during an investigation to begin. If a complainant 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 complainant'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 complainant 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 complainant. When determining whether to proceed without cooperation from the complainant, the Title IX Coordinator will weigh a number of factors. Examples of factors the Title IX coordinator will consider are the following: the risk of the respondent committing additional acts; if the respondent has threatened to commit additional acts; if other complaints have been reported about the same respondent; if the complaint involves multiple respondents; the respondent's history of arrests or other conduct records; the involvement of a weapon; the ages of the complainant and respondent; and the University's ability to move forward with the investigation without the complainant.

If the Title IX Coordinator moves forward with the investigation, with or without the complainant's participation, information will only be shared with those individuals who are responsible for handling the school's response to the complaint and those necessary to the investigation. The Title IX Coordinator will inform the complainant, to the extent possible, of individuals with whom information about the complaint will be shared.

Public awareness events such as "Take Back the Night," the Clothesline Project, candlelight vigils, protests, "survivor speak outs" or other forums in which students disclose incidents of sexual violence, are not considered notice to the University of sexual violence for purposes of triggering its obligation to investigate any particular incident(s). Such events may, however, inform the need for campus-wide education and prevention efforts, and the University will provide information about students' Title IX rights at these events.

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

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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 needs and privacy of the respondent. 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 complainant. For a listing of the resources available to sexual assault and sexual misconduct complainants, please visit the Violence Prevention Office website <http://violenceprevention.olemiss.edu>.

The Title IX Coordinator may recommend immediate implementation of additional steps to provide for the safety of the complainant 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 academic accommodations; "no contact" letters; changes in course schedules and changes in housing assignments; and disability, health, and/or mental health services. Any such interim step taken by the Title IX Coordinator is not appealable, but such steps may be modified by the Title IX Coordinator at any time.

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

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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 or physical force. 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 and/or sexual identity 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.

2. Sexual Touching:

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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 complainant access to the University's resources and opportunities, unreasonably interferes with the complainant's work or living environment, or deprives the complainant of some other protected right.

4. 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 videotaping, audiotaping, 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.
- 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 are also 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" drug or licit or illicit substances** 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:

Retaliation against an individual who initiates a sexual misconduct complaint, participates in an investigation, or pursues legal action, is prohibited. The University defines retaliation as any adverse action (including intimidation) taken against an individual who has participated in any manner in an investigation, proceeding, or hearing under these policies and procedures.

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Independent action may be taken against anyone engaging in retaliation including individuals who are acting on behalf of the respondent or complainant, with or without the knowledge of the respondent. 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 all parties, 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: academic accommodations, “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.

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 respondent or diminish the serious nature of the offense. When alcohol or drugs are involved, neither party will be found responsible for voluntary, personal alcohol or voluntary, personal drug use and should not let his or her use of alcohol or drugs be a deterrent to reporting or responding to the incident.

PREVENTION AND EDUCATION

The University is committed to an environment where all members utilize bystander intervention to prevent and end violence on campus and in the community. The University presents programming on prevention of sexual misconduct, relationship violence and stalking to all students, staff and faculty at orientation and throughout the year.

The University also educates all its members on awareness and intervention related to sexual misconduct, relationship violence and stalking. Education includes University policy, state criminal laws, Title IX and federal laws, the impact of trauma, how to recognize and respond to incidents and the importance of reporting incidents.

To request an educational program, contact the Violence Prevention Office at 915-1059.

The University mandates training for all incoming students to increase awareness and foster prevention. The University mandates training for all staff and faculty

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 generally 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 generally within 40 days of receiving the complaint. The degree to which a complainant of sexual misconduct participates in the investigation and subsequent hearing will be up to the complainant to decide; however, when a complainant 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 be forwarded to the Office of Conflict Resolution and Student Conduct for a hearing. If the Title IX Coordinator does not find there is sufficient evidence to proceed with the hearing, the complainant may still request a hearing before the hearing board.
 - b. **Intake Meetings:** Generally, within 45 days, the University will conduct individual intake meetings for the complainant and the respondent student(s). During the intake meeting, parties will be informed of their rights and the hearing process. Sanctions may be given to the respondent during the intake phase, but only if the Title IX Coordinator, the complainant and the respondent all agree on

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appropriate sanctions. If all three parties agree on appropriate sanctions, this decision is not appealable.

- c. **Hearing Decision:** Generally, within 60 days, the University will render a hearing decision to include findings of “responsible” or “not responsible” of each charge and any appropriate sanctions. The University will attempt to notify, simultaneously, both the complainant and respondent, in writing, within 24 hours of this decision.
 - d. **Appeal:** The complainant and/or the respondent may appeal the findings and/or the sanctions of the hearing board. 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 complainant and respondent will be notified in writing of the appellate decision generally within 12 days of the Vice Chancellor for Student Affairs receiving the appeal.
2. During the investigation phase, but generally no later than 30 generally 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 complainant and the respondent must all agree to engage in mediation. The Title IX Coordinator will appoint a mediator, and the mediation will be conducted generally 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. During the proceeding, complainants are responsible for supporting their complaints, and respondents are responsible for responding to the complaint. All parties have the right to have an advisor attend the hearing; however, advisors are not permitted to speak or participate directly in the hearing and are limited to speaking only to the party they are advising. The parties may request to have one additional advisor at the hearing. This request must be submitted in writing to the Office of Conflict Resolution and Student Conduct at least 72 hours before the proceeding.
4. The complainant and the respondent will have individual intake meetings to discuss their rights, the student conduct charges and the hearing process. The respondent will not have the opportunity to agree to sanctions during the intake meetings (and thus avoid a hearing before the hearing board) unless both the Title IX Coordinator and the complainant already have agreed that the suggested sanctions are appropriate. If the sanctions are then agreed to by the respondent, then neither party may appeal.
5. A trained three-member hearing board will be selected, based on availability, by the Office of Conflict Resolution and Student Conduct. Before the proceeding, the complainant and respondent will have an opportunity to see a list of board members who will be serving as fact-finders and request recusal of any they have reason to believe are biased.

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6. A University employee of the three-member hearing board will preside over the hearing as chair. At the beginning of the hearing, the chair will explain the process of the hearing.
7. Students must submit all witness names, evidence, and other information they want considered by the hearing board **72 hours** prior to the start of the hearing. Each student will have the opportunity to review the case file before the hearing, if that is reasonably possible under the circumstances.
8. During the course of the hearing, the chair will make all procedural and evidentiary determinations, which are final.
9. Generally, all relevant information, (information used to prove or disprove that sexual misconduct has occurred), will be considered during the proceeding.
10. The complainant may choose to be present throughout the entire hearing.
11. The complainant 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 respondent by a barrier.
12. A party'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.
13. 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 hearing board is the finder-of-fact, the Title IX Coordinator will not be asked whether the respondent 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.
14. All questions must be relevant, and all questions will be directed to the University employee chair.
15. Both parties may give closing statements.
16. The complainant may submit an impact statement that will be taken into consideration only if there is a finding of "responsible" for any sexual misconduct charge.
17. The decision of the hearing board and sanctions will be determined within 48 hours of the hearing completion.
18. The complainant and respondent will be notified of the hearing board's finding concurrently. Additionally, the complainant and respondent will receive formal notification of the outcome in writing. The same notification process will be followed for all cases under appeal.

The complainant and the respondent both have the right to appeal the decision of the hearing board as outlined in part six of University of Mississippi policy, DSA.SC.300.010, Student Conduct Process, as modified by this policy.