SEXUAL MISCONDUCT, SEXUAL ASSAULT, AND SEXUAL HARASSMENT POLICY

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. This policy sets forth the resources available to students and employees, describes prohibited conduct, and establishes procedures for responding to sexual misconduct incidents that include sexual assault, sexual harassment and other unwelcome behaviors as explained below.

Reason for Policy/Purpose

Sexual misconduct is inconsistent with the standards and ideals of our community and will not be tolerated. The University is committed to fostering an academic, work, and living environment that is free from all forms of discrimination and sexual misconduct including sexual harassment and sexual assault. Additionally, federal law prohibits all forms of sexual harassment under Title IV, Title VII and Title IX. This policy assists the University to comply with federal and state legal mandates and University policies in relation to such misconduct.

Who Needs to Know This Policy

All members of the University community.

Website Address for this Policy

www.usm.edu/sexual-misconduct
Definitions

**Coercion** – Unreasonable pressure for sexual activity.

**Consent** – Clear, unambiguous, and voluntary agreement between the participants, communicated by clearly understandable words or actions, to engage in each form of sexual activity.

**Dating violence** – Violence by a person who is, or has been, in a romantic or intimate relationship with the victim. Whether there was such a relationship will be gauged by its length, type, and frequency of interaction.

**Domestic violence** – Includes asserted violent misdemeanor and felony offenses committed by the victim’s current or former spouse, current or former husband, current or former cohabitant, person similarly situated under domestic or family violence law, or anyone else protected under domestic or family violence law.

**Employee** – Any person employed by The University of Southern Mississippi including student-employees, staff, faculty and administrative personnel.

**Force** – The use of physical violence and/or imposing on someone physically to gain sexual access.

**Incapacitation** – A state where someone cannot make rational, reasonable decisions because they lack the capacity to give knowing consent.

**Non-consensual intentional sexual contact (or attempts to commit same)** – Any intentional sexual touching with any object, by any person upon another, without consent and/or by force.

**Non-consensual sexual intercourse (or attempts to commit same)** – Any sexual intercourse, however slight, by any person upon another without consent and/or by force.

**Sexual exploitation** – Behavior which occurs when an individual takes non-consensual or abusive sexual advantage of another for his/her own advantage or benefit or to benefit or advantage anyone other than the one being exploited, and that behavior does not otherwise constitute one of the other sexual misconduct offenses.

**Sexual harassment** – Sexual harassment is a form of sex discrimination prohibited by federal law under Title IX and Title VII. Sexual harassment is unwelcome conduct of a sexual nature and can include unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature, such as sexual assault or acts of sexual violence.

Sexual harassment becomes unlawful under Title IX and/or Title VII when it creates a hostile environment where the harassing conduct is sufficiently severe, persistent or pervasive so that it unreasonably interferes with, denies or limits an individual’s ability to participate in or benefit from the University’s work environment, educational programs and/or activities based on sex. A
single instance of sexual assault may be sufficiently severe to constitute a hostile environment. Sexual harassment is also unlawful when there are: a) unwelcome sexual advances, requests for sexual favors or other verbal or physical conduct of a sexual nature; and b) submission to or rejection of such conduct results in adverse educational or employment action. This is known as *Quid pro quo* sexual harassment.

**Sexual misconduct** – Any non-consensual behavior of a sexual nature that is committed by force or intimidation, or that is otherwise unwelcome. This descriptive term includes, but is not limited to, sexual harassment, sexual assault, dating violence, domestic violence, stalking, sexual exploitation and sexual intimidation.

**Stalking** - A course of conduct directed at a specific person that would cause a reasonable person to fear for his, her, or others’ safety, or to suffer substantial emotional distress.

**Student** – A person enrolled at the University, either full-time or part-time, or a person seeking admission or accepted to the University for admission.

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### Policy

1.0 **INTRODUCTION**

The University of Southern Mississippi is committed to maintaining a community environment that recognizes the inherent worth and dignity of every person, regardless of race, religion, national origin, age, gender, gender identity, sexual orientation, disability, or veteran status. All members of the University community share a responsibility to create and maintain an environment which promotes respect, safety, and the dignity of each individual. To achieve this goal, the University is committed to fostering an academic, work, and living environment that is free from all forms of discrimination and sexual misconduct, including sexual harassment and sexual assault. The University aims to eradicate sexual misconduct through education, training, clear policies, and serious consequences for violations of these policies.

2.0 **POLICY**

2.1 The University prohibits sexual misconduct in any form, including sexual assault or sexual abuse, sexual harassment, and other forms of nonconsensual sexual conduct, all of which can be forms of sexual discrimination.

2.2 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 may be available to any University community member with a complaint and enforced against a person found to have engaged in the behavior. The University is committed to fair and prompt procedures to investigate 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 individual with a 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.

2.3 This policy identifies prohibited behavior for two important reasons: first, so that victims of prohibited behavior can easily recognize what happened to them as misconduct and comfortably seek assistance; and second, so that all members of the University community are aware of these expectations and can make appropriate decisions, knowing there will be consequences for violating this policy.

2.4 The University will make this policy and educational opportunities readily available to all students and employees and other members of the University community. Specifically, the University provides periodic education to students and employees regarding sexual misconduct through the following offices:

**Office of Title IX Coordinator**
International Center (IC) 505
118 College Drive #5079
Hattiesburg, MS 39406
Phone: 601.266.4466

**University Police Department**
Bond Hall ground floor
118 College Drive #5061
Hattiesburg, MS 39406
Phone: 601.266.4986

**Human Resources**
McLemore Hall (MCL) 307
118 College Drive #5111
Hattiesburg, MS 39406
Phone: 601.266.4050

**Office of the Director of Compliance**
The University of Southern Mississippi
118 College Drive, #5079
Hattiesburg, MS 39406-0001
Phone: 601.266-4466

**Office of the Dean of Students**
The University of Southern Mississippi
118 College Drive #5204
Hattiesburg, MS 39406-0001
Phone: 601.266.6028
2.5 Likewise, community agencies offer sexual misconduct education and information upon request. The University encourages all students, employees, and any affiliated organizations of such to take advantage of those educational opportunities and to learn about this policy. Creating a respectful, safe and non-threatening environment is the responsibility of all members of the University community.

3.0 SCOPE

3.1 This policy applies to all students, employees, and to others, as appropriate, with respect to activities occurring on any University property and University-related activities occurring off-campus, including University programs outside the United States. This policy also applies to the activities of recognized student organizations including, but not limited to, fraternities, sororities, clubs, and cooperatives. It also applies to persons conducting business with or visiting the University, even though such persons are not directly affiliated with the University. Likewise, reports of sexual misconduct, sexual assault and/or sexual harassment committed by a University student or employee at a location other than University property are covered by this policy. Reports of sexual misconduct, sexual assault and/or sexual harassment committed on University property by individuals who are not students or employees are subject to appropriate actions by the University, including but not limited to, pursuing criminal or civil action against them and imposing such other sanctions as may be appropriate.

3.2 As provided by the Code of Student Conduct and Disciplinary Conduct, the term "student" is defined as a person enrolled at the University, either full-time or part-time, or a person seeking admission or accepted to the University for admission.

4.0 JURISDICTION

This policy shall cover both on-campus and off-campus conduct as those terms are described below.

4.1 **On-Campus Violations:** The campus includes the geographic confines of the University, including its land, institutional roads and buildings, its leased premises, common areas at leased premises, the property, facilities and leased premises of organizations affiliated with the University, such as university housing, and university-recognized housing. University housing includes all types of university residence housing such as halls and apartments. University-recognized housing includes fraternity and sorority chapter dwellings.

4.2 **Off-Campus Violations:** Students and employees should be aware that off-campus violations that affect a clear and distinct interest of the University are subject to disciplinary sanctions. As examples, sexual misconduct and harassment are within the University's interests when the behavior:
4.2.1 Involves conduct directed at or by a University student or other member of the University community (e.g., private house party, outside employment);

4.2.2 Occurs during University-sponsored events (e.g., field trips, social or educational functions, University-related travel, student recruitment activities, internships and service learning experiences);

4.2.3 Occurs during the events of organizations affiliated with the University, including the events of student organizations;

4.2.4 Occurs during a Study Abroad Program or other international travel; or

4.2.5 Poses a disruption or threat to the University community.

5.0 SEXUAL MISCONDUCT

5.1 Sexual misconduct is a broad term encompassing any non-consensual behavior of a sexual nature that is committed by force or intimidation, or that is otherwise unwelcome. The term includes, but is not limited to, sexual assault, sexual exploitation, sexual intimidation, and sexual harassment as those behaviors are described later in this section.

5.2 Sexual misconduct may vary in its severity and consists of a range of behavior or attempted behavior. It can occur between strangers or acquaintances, including people involved in an intimate or sexual relationship. Sexual misconduct can occur between members of the same or different sex and can also occur while individuals are fully clothed.

5.3 Sexual misconduct encompasses behaviors such as rape, sexual assault (which includes any kind of nonconsensual sexual contact), sexual harassment, intimate partner violence (including dating and domestic violence), stalking, and any other conduct of a sexual nature that is nonconsensual, or has the effect of threatening, intimidating, or coercing a person or persons. When there is a lack of mutual consent about sexual activity, or there is ambiguity about whether consent has been given, one can be charged with, and found guilty of, committing a sexual assault or another form of sexual misconduct.

5.4 Much sexual misconduct includes nonconsensual sexual contact, but this is not a necessary component. Threatening speech, which is sufficiently serious to constitute sexual harassment, for example, will constitute sexual misconduct. Photographs, video, or other visual or auditory records of sexual activity made without explicit consent constitute sexual misconduct, even if the activity documented was consensual. Similarly, sharing such recordings without explicit consent is a form of sexual misconduct. For example, forwarding a harassing electronic communication may also constitute an offense.
5.5 Sexual misconduct offenses that are prohibited include, but are not limited to:  

5.5.1 Non-consensual sexual intercourse (or attempts to commit same);  

5.5.2 Non-consensual intentional sexual contact (or attempts to commit same);  

5.5.3 Sexual exploitation; and  

5.5.4 Sexual harassment.  

5.6 Non-Consensual Sexual Intercourse (Or Attempts to Commit Same)  

5.6.1 Non-consensual sexual intercourse (or attempts to commit same) is any sexual intercourse, however slight, by any person upon another without consent and/or by force. It includes oral, anal and vaginal penetration, to any degree, with any object. It is referred to as “sexual assault” in this policy.  

5.6.2 Intercourse includes vaginal penetration by a penis, object, tongue or finger, anal penetration by a penis, object, tongue or finger, and oral copulation (mouth to genital contact or genital to mouth contact), no matter how slight the penetration or contact.  

5.7 Non-Consensual Intentional Sexual Contact (Or Attempts To Commit Same)  

5.7.1 Non-consensual intentional sexual contact (or attempts to commit same) is any intentional sexual touching with any object, by any person upon another, without consent and/or by force.  

5.7.2 Sexual touching is contact of a sexual nature, however slight.  

5.7.3 Sexual contact includes intentional contact with the breasts, buttocks, groin, or genitals, or touching another with any of these body parts, or making another touch the offender or themselves with or on any of these body parts, or any other type of intentional bodily contact of a sexual manner.  

5.8 Sexual Exploitation  

5.8.1 Sexual exploitation occurs when an individual takes non-consensual or abusive sexual advantage of another for his/her own advantage or benefit.

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1 The University has elected to use the National Center for Higher Education Risk Management (NCHERM) and the Association of Title IX Administrators (ATIXA) Model Campus Sexual Misconduct Policy as the template for this policy. The model policy may be found at www.ATIXA.org.
or to benefit or advantage anyone other than the one being exploited, and that behavior does not otherwise constitute one of the other sexual misconduct offenses.

5.8.2 Examples of sexual exploitation include, but are not limited to the following behaviors:

- Sexual exhibitionism by exposing one’s genitals in non-consensual circumstances or inducing another to expose their genitals;
- Sex-based cyber-harassment;
- Prostitution or the solicitation of a prostitute;
- Peeping or other voyeurism; voyeurism involves both secretive observation of another's sexual activity or secretive observation of another for personal sexual pleasure;
- Going beyond the boundaries of consent, e.g., by allowing others to view consensual sex or the non-consensual video or audiotaping of sexual activity; or the electronic recording, photographing, or transmitting sexual or intimate utterances, sounds, or images without knowledge and consent of all parties;
- Knowingly transmitting a sexually transmitted infection/disease or HIV to another;
- Invasion of sexual privacy; Distribution or publication of sexual or intimate information about another person without consent;
- Sexually-based stalking and/or bullying may also be forms of sexual exploitation; Stalking may take many forms including persistent calling, texting, or Internet posting, as well as physical stalking, when the context of the communication or the nature of the stalking is of a sexual or intimate nature;
- Sexual intimidation - Sexual intimidation is an implied or actual threat to commit a sex act against another person, or behavior used to coerce participation in a sex act;

5.9 Sexual Harassment

5.9.1 Sexual harassment is unwelcome conduct of a sexual nature. Sexual harassment includes, but is not limited to, behavior that is sufficiently severe, persistent or pervasive that it unreasonably interferes with, denies or limits an individual’s ability to participate in or benefit from the University’s work environment, educational programs and/or activities,
and is based on power differentials (quid pro quo)^2, the creation of a hostile environment^3, or retaliation.^4

5.9.2 Whether particular physical, visual, or verbal conduct constitutes harassment in violation of this policy will depend upon all of the facts and circumstances involved, the context in which the conduct occurred, and the frequency, severity and pattern of the conduct.

5.9.3 Not all workplace or educational conduct that may be described as “harassment” affects the terms, conditions or privileges of employment or education. For example, a mere utterance of an ethnic, gender-based or racial epithet which creates offensive feelings in an employee or student would not normally affect the terms and conditions of their employment or education.

5.9.4 Incidents of sexual harassment can occur in a variety of contexts. For example,

- It may be conduct toward an individual of the opposite sex or the same sex;
- It may occur between peers or between individuals in a hierarchical relationship;
- It may be aimed at coercing an individual to participate in an unwanted sexual relationship, or it may have the effect of causing an individual to change behavior or work performance; or
- It may consist of repeated actions or may even arise from a single incident if sufficiently egregious.

5.9.5 Types of behavior that may be considered as evidence of sexual harassment include, but are not limited to:

- an attempt to coerce an unwilling person into a sexual relationship;
- to repeatedly subject a person to egregious, unwelcome sexual attention;
- to punish a refusal to comply with a sexual based request;
- to condition a benefit on submitting to sexual advances;

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^2 Quid pro quo sexual harassment exists when there are: a) unwelcome sexual advances, requests for sexual favors or other verbal or physical conduct of a sexual nature; and b) submission to or rejection of such conduct results in adverse educational or employment action.

^3 Hostile environment sexual harassment includes any situation in which there is harassing conduct that is sufficiently severe or pervasive and objectively offensive that it alters the conditions of employment or limits, interferes with or denies educational benefits or opportunities, from both a subjective (the alleged victim’s) and an objective (reasonable person’s) viewpoint.

^4 Retaliatory harassment is any adverse employment or educational action taken against a person because of the person’s participation in a complaint or investigation of discrimination or sexual misconduct.
• sexual violence;
• intimate partner violence (including dating or domestic violence);
• stalking;
• gender-based bullying.

5.9.6 Some examples of sexual harassment include the following:

• A professor insists that a student have sex with him/her in exchange for a good grade. This is harassment regardless of whether the student accedes to the request.

• A student repeatedly sends sexually oriented jokes around on an email list he/she created, even when asked to stop, causing one recipient to avoid the sender on campus and in the residence hall in which they both live.

• Explicit sexual pictures are displayed in a professor’s office, on the exterior of a residence hall door or on a computer monitor in a public space.

• Two supervisors frequently “rate” several employees’ bodies and sex appeal, commenting suggestively about their clothing and appearance.

• A professor engages students in discussions in class about their past sexual experiences, yet the conversation is not in any way germane to the subject matter of the class. The professor probes for explicit details, and demands that students answer her, though they are clearly uncomfortable and hesitant.

• An ex-girlfriend widely spreads false stories about her sex life with her former boyfriend to the clear discomfort of the boyfriend, turning him into a social pariah on campus.

• Male students take to calling a particular brunette student “Monica” because of her resemblance to Monica Lewinski. Soon, everyone adopts this nickname for her, and she is the target of relentless remarks about cigars, the president, “sexual relations”, and Weight Watchers.

• A student grabs another student by the hair, then grabs her breast and puts his mouth on it.

6.0. OTHER APPLICABLE DEFINITIONS

6.1 Sexual activity requires consent.
6.2 **Consent** is defined as clear, unambiguous, and voluntary agreement between the participants, communicated by clearly understandable words or actions, to engage in each form of sexual activity. The lack of informed, freely given consent to sexual contact constitutes sexual misconduct.

- Persons who want to engage in the sexual activity are responsible for obtaining consent--it should never be assumed.

- Consent cannot be inferred from silence, passivity, or lack of active resistance. In other words, consent cannot be inferred from the absence of a "no". A clear "yes," verbal or otherwise, is necessary.

- Although consent does not need to be verbal, verbal communication is the most reliable form of asking for and gauging consent, and individuals are thus urged to seek consent in verbal form. Talking with sexual partners about desires and limits may seem awkward, but serves as the basis for positive sexual experiences shaped by mutual willingness and respect.

- A current or previous dating or sexual relationship is not sufficient to constitute consent.

- Consent to one form of sexual activity does not imply consent to other forms of sexual activity.

- Consent must be clear and unambiguous for each participant throughout any sexual encounter. At any time, a participant can communicate that he or she no longer consents to continuing the activity.

- Consent can be revoked at any time.

- Sexual partners must evaluate consent in an ongoing fashion and should communicate clearly with each other throughout any sexual encounter.

- In order to give effective consent, one must be of legal age.

- By definition, there is no consent when there is a threat of force or violence or any other form of coercion or intimidation, physical or psychological.
6.3 **Force** is the use of physical violence and/or imposing on someone physically to gain sexual access. Force also includes threats, intimidation (implied threats) and coercion that overcome resistance or produce consent.

6.4 **Coercion** is unreasonable pressure for sexual activity. Coercive behavior differs from seductive behavior based on the type of pressure someone uses to get consent from another. When someone makes clear to you that they do not want sex, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.

**NOTE:** There is no requirement that a party resist the sexual advance or request, but resistance is a clear demonstration of non-consent. The presence of force is not demonstrated by the absence of resistance. Sexual activity that is forced is by definition non-consensual, but non-consensual sexual activity is not by definition forced.

6.5 **Incapacitation** is a state where someone cannot make rational, reasonable decisions because they lack the capacity to give knowing consent (e.g., to understand the “who, what, when, where, why or how” of their sexual interaction).

- Sexual activity with someone who one should know to be – or based on the circumstances should reasonably have known to be – mentally or physically incapacitated (by alcohol or other drug use, unconsciousness or blackout), constitutes a violation of this policy.

- This policy also covers a person whose incapacity results from mental disability, sleep, involuntary physical restraint, or from the taking of rape drugs. Possession, use and/or distribution of any of these substances, including Rohypnol, Ketamine, GHB, Burundanga, etc. is prohibited, and administering one of these drugs to another is a violation of this policy.

- Use of alcohol or other drugs will never function as a defense to a violation of this policy.

6.6 The sexual orientation and/or gender identity of individuals engaging in sexual activity is not relevant to allegations under this policy.

7.0 **CONFIDENTIALITY**

7.1 The University of Southern Mississippi is committed to creating an environment that encourages individuals of the University community to come forward if they have experienced any form of sexual misconduct. The University will work to safeguard the identities and privacy of those who seek help or who report sexual misconduct. However, it is important to understand the limits on confidentiality of
individuals who may be contacted for such assistance. Different people, depending on their positions, have different obligations with regard to confidentiality.

7.2 Under Mississippi law, communications with some individuals are confidential. Individuals should always confirm whether confidentiality applies to the communication. Generally, confidentiality applies when one seeks services from the following persons:

- Local rape crisis center (including The Shafer Center for Crisis Intervention on the USM Hattiesburg campus and the Gulf Coast Women's Center for Non-Violence in Biloxi)
- Psychological counselor (including counselors at USM Student Counseling Services)
- Health care provider (including medical professionals at USM Student Health Services)
- Personal attorney
- Religious/spiritual counselor

7.3 Any other University employee cannot guarantee complete confidentiality. Information is disclosed only to those individuals who have an essential need to know in order to carry out their University responsibilities. As is the case with any educational institution, the University must balance the needs of the individual reporting an alleged offense with its obligation to protect the safety and well-being of the community at large. Therefore, depending on the seriousness of the alleged incident, further action may be necessary, including a campus security alert. The alert, however, would never contain any information identifying the person who brought the complaint.

8.0 RETALIATION

The University prohibits retaliation against an individual for making a complaint of sexual misconduct (including sexual assault and sexual harassment), for resisting such behavior, or for otherwise using or participating in the complaint resolution process. Prohibited behavior includes any form of intimidation, threats, or harassment by the individual accused of misconduct or friends, family or other persons acting in support of or on behalf of that individual. Acts of retaliation are, by themselves, cause for disciplinary action. Concerns of retaliation should be communicated to the University Title IX Coordinator.

9.0 FALSE COMPLAINTS

The University also prohibits an individual from knowingly filing a false complaint or making misrepresentations of sexual misconduct (including sexual assault and sexual harassment). However, a complaint made in good faith is not considered false merely
because the evidence does not ultimately support the allegation of sexual misconduct or sexual harassment. Acts of knowingly filing false complaints are, by themselves, cause for disciplinary action.

**Review**

This policy will be reviewed by the Office of General Counsel and the Director of Compliance every three years and as necessitated by a change in the law.

**Forms/Instructions**

**Appendices**

**Related Information**

**History**

**Amendment(s):** July 10, 2013. Technical corrections to comply with the March 2013 reenactment of the Violence Against Women Act (VAWA), the Campus Sexual Violence Elimination Act (SaVE Act) and the May 2013 Office of Civil Rights (OCR) Resolution Agreement with the University of Montana.
Authorization

RECOMMENDED BY:

Responsible University Administrator

Date

Responsible University Officer

Date

REVIEWED BY:

Director of Compliance

Date

Office of General Counsel

Date

APPROVED:

President

Date