PROCEDURES FOR THE RESOLUTION OF ALLEGATIONS OF SEXUAL MISCONDUCT, SEXUAL ASSAULT, AND SEXUAL HARASSMENT

Policy Statement

The University has adopted a policy that prohibits sexual misconduct in any form, including sexual assault or sexual abuse, sexual harassment, and other forms of nonconsensual sexual conduct. This Procedure sets forth the University’s obligations and methods for responding to sexual misconduct incidents that include sexual assault, sexual harassment and other unwelcome behaviors as set forth in the 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 harassment, including sexual misconduct and sexual assault. Additionally, federal law views sexual misconduct and sexual assault as forms of sexual harassment prohibited under Title VII and Title IX. This procedure implements the University’s commitment to comply with federal and state legal mandates and University policies in relation to such misconduct.

Who Needs to Know This Procedure

All members of the University of Southern Mississippi community.
1.0 TITLE IX COORDINATOR

The President has appointed a Title IX Coordinator for the University. The identity of the University’s Title IX Coordinator may be determined by visiting the Sexual Misconduct website www.usm.edu/sexual-misconduct. Among the duties and responsibilities of the Title IX Coordinator are the following:

1.1 The University’s Title IX Coordinator oversees policies and procedures that apply to complaints or reports of sexual misconduct, including sexual discrimination, sexual assault, sexual violence, or sexual harassment by employees, students, or third parties, and for advising victims of sexual misconduct of their right to file a complaint or to seek informal resolution and the process for each.

1.2 The Title IX Coordinator may appoint a deputy Title IX Coordinator and may direct such deputy to assist in Title IX responsibilities.

1.3 The Title IX Coordinator shall designate and appoint a sufficient number of individuals to serve as members of the University Sexual Misconduct Investigative Team (SMIT).

1.4 The Title IX Coordinator supervises the training and functional operation of SMIT members, which includes the investigation and hearings of sexual misconduct complaints and reports.

2.0 SEXUAL MISCONDUCT INVESTIGATIVE TEAM (SMIT)

The Sexual Misconduct Investigative Team shall consist of employees of the University and shall represent various segments of the University, including staff, faculty and campuses. Members shall receive specific training related to their responsibilities to assist them in all aspects of their duties, which include investigations and hearings relating to complaints or reports of sexual misconduct. Members shall be assigned to serve as investigators or hearing officers on a rotating basis by the Title IX Coordinator.
3.0 INFORMAL RESOLUTION OF SEXUAL MISCONDUCT OR SEXUAL HARASSMENT

3.1 Employees or students who believe they are victims of sexual harassment or misconduct may have the option of proceeding informally or formally. The employee or student may find informal resolution particularly appropriate if the conduct is isolated and of the following nature: sexual innuendo; display or distribution of drawings, pictures or other materials with a sexual content; sexual or "dirty" jokes; or comments with sexual content. Please note that the formal complaint process is available for sexual harassment or misconduct of any nature, and that these examples are not intended to discourage use of the formal complaint process.

3.2 Informal resolution is not an option for cases of sexual assault, including sexual or inappropriate touching of any kind. Information on how to formally report sexual assault, sexual harassment and sexual misconduct is contained below.

3.3 If one chooses to proceed informally, the employee or student should contact the Title IX Coordinator to report the sexual harassment or misconduct and specify that they wish to proceed informally. Resolution at the informal complaint process level will be mediated by the Title IX Coordinator, or his/her designee, and may include an agreement in which one or more of the parties involved agrees to accept discipline in the form of a warning, censure, probation, or other such disciplinary action as may be warranted by the circumstances of each case.

3.4 To the extent the parties are able to achieve a satisfactory resolution of the complaint through the informal resolution process, the complaint will be considered resolved. The accused and accuser will receive written notification of the outcome and disposition of the complaint. The fact that a complaint of sexual harassment or misconduct may be concluded at the request of the accusing party does not preclude the filing of a formal complaint by others, including appropriate University officials.

3.5 In those cases in which a mutually satisfactory resolution of an informal complaint of sexual harassment or misconduct cannot be achieved, either the accused or the accuser may request in writing to advance the complaint to the formal complaint process. This request should be submitted in writing to the Title IX Coordinator within ten (10) working days of the proposed informal resolution.

4.0 REPORTING SEXUAL MISCONDUCT, SEXUAL ASSAULT, OR SEXUAL HARASSMENT – FORMAL COMPLAINT PROCESS

4.1 Every administrator, supervisor, and University official is responsible for promptly reporting incidents of sexual misconduct which come to their attention.
Students, faculty and staff who witness, or are aware of, suspected incidents of sexual misconduct are strongly encouraged to report the incident.

4.2 Complaints or reports of sexual misconduct should be reported immediately, or as soon as possible, to the University’s Title IX Coordinator.

4.2.1 Complaints may be made in writing by completing a Sexual Misconduct Complaint Form which may be obtained from the Title IX Coordinator website (Form PDF link) or in person at the Title IX Coordinator’s office.

4.2.2 Complaints of sexual misconduct may be made or reported in person to the Title IX Coordinator.

4.2.3 Complaints of sexual misconduct may be made or reported to Faculty, Chairs, Deans, Dean of Students, or University employees in positions of authority which shall then, immediately, or as soon as possible, be reported to the University’s Title IX Coordinator.

4.2.4 While an investigation may begin on the basis of an oral complaint or report, the Complainant is strongly encouraged to file a written complaint. The Complainant should submit a written and signed statement setting out the details of the conduct which is the subject of the complaint, including the Complainant’s name, signature, and contact information; the name of the person directly responsible for the alleged violation; a detailed description of the conduct or event that is the basis of the alleged violation; the date(s) and location(s) of the occurrence(s); the names of any witness(es) to the occurrence(s); the resolution sought; and any documents or information that are relevant to the complaint.

4.3 Persons who have been victims of either sexual assault or sexual violence are encouraged to immediately contact the University Police Department at 601-266-4986 or by dialing 911 and seeking immediate medical attention even if they do not wish to pursue criminal charges or otherwise pursue a complaint against their attacker. [External links to inside and outside resources should be inserted at this point.]

5.0 IMMEDIATE ACTIONS BY UNIVERSITY

The Title IX Coordinator, Dean of Students Office, and the University Police Department (UPD), working in coordination with other necessary University Administrators, may take immediate interim actions to protect the safety of the University community, to enable students or employees with complaints, and witnesses, to continue studies or duties of employment, and to ensure the integrity of an investigation. These actions may include:
• Interim suspension of an accused student or employee
• No-contact notices
• Modifying class or work schedules as necessary
• Making alternate housing or workplace arrangements
• Addressing other academic or workplace concerns (e.g., assignments, grades, leaves of absence, and withdrawal)
• Any other appropriate action warranted by the circumstances

Violations of these protective actions will constitute related offenses which may lead to additional disciplinary action.

6.0 RESOURCES AND SERVICES

Campus and community services are available, even if University or criminal reports are not made. The University strongly encourages anyone who feels he or she is, or has been, the victim of sexual misconduct to seek assistance to care for himself or herself emotionally and physically through confidential crisis intervention, healthcare, and counseling. As you tend to your health, you should keep in mind that medical examinations are time-sensitive and are critical in preserving evidence of sexual assault so that options can be considered at a later time. For a list of available services, click here.

7.0 TIMELINE FOR PROCESS

7.1 Generally, cases of sexual misconduct will be investigated and fully decided within sixty (60) business days of the date that the Title IX Coordinator is notified of the complaint, unless there are extenuating circumstances such as uncooperative witnesses, break periods, and periods when the University is closed.

7.2 The University has an obligation to investigate complaints or reports of sexual misconduct regardless of whether or not law enforcement is conducting a separate criminal investigation. However, 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 will promptly resume its investigation as soon as the Title IX Coordinator is notified by the law enforcement agency that it has completed the evidence gathering process, which typically takes from three to ten calendar days, although the delay in the University’s investigation may be longer in certain instances.

7.3 In order to meet the investigation and decision deadline, the Title IX Coordinator will appoint members of the Investigative Team and the Hearing Panel and will also set a tentative deadline for completion of the investigation and the date of a
hearing before the Hearing Panel upon initiation of the formal investigation. The Complainant, Respondent, and team members will be advised of the dates at the onset of the initiation of the formal investigation. In the event the investigation does not find that a violation of the University’s sexual misconduct policy occurred, the hearing before the Hearing Panel will be cancelled and team members serving on the Hearing Panel will be notified. Scheduling a hearing before the Hearing Panel at the onset of the investigation does not reflect a prejudgment of the matter by the University but is done for the sole purpose of meeting the University’s goal of completing the investigation and decision of the matter within the sixty (60) day time period.

8.0 PRELIMINARY INVESTIGATION

The Title IX Coordinator shall have the responsibility, upon receiving a complaint or report of sexual misconduct, to conduct a preliminary investigation for the purpose of determining whether or not there is sufficient evidence of a violation of the University’s sexual misconduct policy which would justify proceeding with a formal investigation.

8.1 The preliminary investigation should be initiated, conducted, and completed within seven (7) business days from the date the complaint or report is received by the Title IX Coordinator.

8.2 If the Title IX Coordinator finds (a) that the facts in the complaint or the report, even if taken as true, do not constitute a violation of the University’s sexual misconduct policy; or (b) the complaint fails to allege facts that suggest sexual misconduct; or (c) the appropriate resolution or remedy has already been achieved, the Coordinator shall close the investigation and notify the Complainant of the findings and that the matter is closed.

8.3 If the Title IX Coordinator finds sufficient evidence of a violation of the University’s Sexual Misconduct Policy, a formal investigation will be initiated in accordance with the procedure set forth below.

8.4 If a student or employee accused of a violation of the University’s Sexual Misconduct Policy withdraws or terminates his/her employment before the conclusion of the University’s investigation and decision regarding a complaint or report of alleged sexual misconduct, as a condition of readmission or rehiring, in addition to any other conditions, that person must submit to an investigation and/or hearing he/she would have had except for the separation from the University. If found responsible, the person must also comply with any sanction which is, was or could have been imposed.
9.0 FORMAL INVESTIGATION

9.1 Upon a determination to initiate a formal investigation, the Title IX Coordinator will set the target date for the completion of the formal investigation and the tentative date for the hearing, if necessary, as set forth above.

9.2 The Title IX Coordinator shall notify the Complainant that the investigation is proceeding. The notice will include tentative dates for completion of the investigation and a hearing, if necessary.

9.3 The Title IX Coordinator shall also prepare and send a Notice of Charge to the Respondent (the one accused of the misconduct), which will include tentative dates for completion of the investigation and a hearing, if necessary.

9.4 The Title IX Coordinator shall select three (3) members of the Sexual Misconduct Investigative Team (SMIT) to investigate the complaint or report of sexual misconduct and an appropriate number of team members to serve on the Hearing Panel.

9.5 During the investigation, SMIT members will collect all evidence relating to the complaint or report of sexual misconduct from all available sources and conduct interviews when appropriate. Upon completion of the formal investigation, they shall reach a finding by majority vote, based upon a preponderance of the evidence, as to whether or not a violation of the University’s sexual misconduct policy occurred and will prepare a written report in conformity with University policies which will be presented to the Title IX Coordinator.

9.6 If there is a finding of no violation of the University Sexual Misconduct Policy, the process is concluded. The Title IX Coordinator will give written notice of the findings and termination of the proceedings to the Complainant, Respondent, and appropriate University Administrators.

9.7 If there is a finding of a violation of the University Sexual Misconduct Policy, the Title IX Coordinator will give written notice of the findings and initiate the hearing process.

10.0 HEARING PROCESS

10.1 When a formal investigation finds that a violation of the University’s Sexual Misconduct Policy has, more likely than not, occurred, the Title IX Coordinator will, within three (3) business days, give written notice to the Complainant and

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1 The University has elected to model portions of this Procedure after the National Center for Higher Education Risk Management (NCHERM) and the Association of Title IX Administrators (ATIXA) Model Campus Sexual Misconduct Policy. The model policy may be found at www.ATIXA.org.
Respondent of the finding and the exact time and place that a Hearing will take place.

10.2 The Title IX Coordinator shall appoint a Hearing Panel for each separate hearing process. Composition of the panel shall be determined by the identity or status of the Complainant and Respondent.

10.2.1 For a hearing process involving a student, the hearing panel shall consist of the Dean of Students, or his/her designee, and two (2) SMIT members, who have not participated in or have prior knowledge of the investigation, as designated by the Title IX Coordinator.

10.2.2 For all other hearing processes, the hearing panel shall consist of three (3) SMIT members as designated by the Title IX Coordinator.

10.3 All hearings shall be closed to the public. However, the Complainant and Respondent have a right to be present at all times.

10.4 The order of presentation at the hearing shall be:

10.4.1 The Complainant shall provide information first. The Complainant may elect to have a member of the SMIT who conducted the formal investigation present the complaint and evidence supplemented by the Complainant’s or other witnesses’ testimony. In the event of such an election by the Complainant, one or more members of the SMIT Investigative Team will present the findings of investigation to the Hearing Panel. The Respondent shall have an opportunity to ask questions of the Complainant and witnesses in a cross-examination format. All members of the Hearing Panel shall have the right to ask questions of any party, witness or SMIT investigative member during the hearing process.

10.4.2 The Respondent will then have an opportunity to present information. The Complainant will have an opportunity to ask questions of the Respondent and witnesses in a cross-examination format.

10.4.3 The Complainant will then be permitted to present witnesses in rebuttal, to which the Respondent may only respond in a cross-examination format.

10.4.4 The parties shall have an opportunity to present closing statements, with the Complainant going first, the Respondent second and the Complainant finally.

10.5 Rights of the Parties: Complainant and Respondent shall have the following rights afforded to them during the hearing process:
10.5.1 The Complainant and the Respondent shall have a right to be present during the hearing. Either party may request a privacy screen or some other appropriate means to assure the parties do not have to personally confront one another.

10.5.2 The Complainant, Respondent, and all participants must act in a civil and courteous manner at all times. Disruptions will not be allowed nor prevent a decision on the merits. In the event anyone becomes disruptive, the Hearing Panel Chair will remind everyone present that disruptions will not be tolerated and will specifically warn the offending person that any further disruptive behavior will result in an expulsion from the hearing. In the event a person persists in disrupting the hearing following a warning by the Chair, the offending person will be excused from the proceedings, and the hearing will continue.

10.5.3 The Complainant and the Respondent are permitted to summon and question witnesses and offer tangible information as set forth in the order of presentation section above (Section 10.4).

10.5.4 A Respondent who fails to appear, upon proper notice of the proceedings, may be adjudicated in absentia (a decision made “in his absence”) and will forfeit all rights of appeal.

10.5.5 Parties may have an adviser present for support and consultation. The adviser, which may include an attorney, will not be allowed to question witnesses, address the Hearing Panel, or otherwise participate in the Hearing Process. The adviser may serve in an advisory capacity only during the Hearing Process.

10.6 Evidence of Other Violations: If the Hearing Panel finds there is reasonable evidence that another University policy, state or federal law has been violated, that matter will be referred to the appropriate University or law enforcement agency or official for any necessary action. However, such will not delay the resolution of the matter before the Hearing Panel.

10.7 Hearing Procedure:

10.7.1 All proceedings before the Hearing Panel, other than organizational activities, may be recorded by electronic audio or video at the discretion of the Hearing Panel. In the event an audio or video recording is made, it will be made available to the Title IX Coordinator and the appeal officer, if an appeal is filed.

10.7.2 Members of the SMIT cannot be called as witnesses by the parties, but rather will present evidence collected during the course of the
investigation, when a Complainant makes such an election, or in the
discretion of the Hearing Panel.

10.7.3 After all parties have presented their information to the Hearing Panel, the
hearing will be closed and the matter recessed, for a maximum of three (3)
business days, to allow the panel to deliberate and reach a finding.

10.7.4 Each case brought before the Hearing Panel is unique and must be decided
after the Panel’s review of all the facts and circumstances presented at the
hearing. The panel shall base its decisions on a preponderance of the
evidence standard and must decide whether it is more likely than not that
the conduct under question violates the University’s Sexual Misconduct
Policy.

10.7.5 After deliberation, the Hearing Panel will vote for the purpose of
determining whether or not a violation of the University’s Sexual
Misconduct Policy has occurred. The decision will be based upon
majority vote of the three (3) panel members.

10.7.6 After the panel has reached a decision, the Chair will inform the parties of
the findings in person by reconvening the parties; by email to the parties’
University email account; or by U.S. Mail. The Chair will also advise the
parties of each one’s right to appeal. The form of notice shall be at the
discretion of the Chair of the Hearing Panel and shall be that which is
determined to be the most expedient and reliable method for informing the
parties.

10.7.7 In the event the Respondent is found to be responsible for violating the
University’s Sexual Misconduct Policy, the Chair will allow both parties
an opportunity to present oral or written impact statements to the panel,
immediately if the parties are present or within forty-eight (48) hours if
they are not.

10.7.8 Following the presentation of impact statements, if any, the panel will
reconvene as soon as possible, for the purpose of discussing, evaluating,
and reaching a decision regarding the sanction or sanctions to be
recommended to Sanctioning Official which shall be the Dean of Students,
if a student is the Respondent, the Director of Human Resources if a staff
member is the Respondent, or an appropriate University official, if a
faculty member is the Respondent.

10.7.9 The Hearing Panel will make a decision on a recommendation for
sanction(s) upon majority vote of the panel.
11.0 SANCTIONS

The following matrix shall guide the Hearing Panel in developing sanctions and provide notice to the University Community of the possible sanctions for an individual found responsible under the University’s Sexual Misconduct Policy. This matrix only provides guidance and is not meant to be exclusive as to other sanctions that can be imposed.

Additionally, prior disciplinary actions of a same or similar nature against an individual may be taken into consideration when imposing sanctions.

11.1 Sanctions Guideline Matrix:

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<th>Prohibited Behavior/Conduct</th>
<th>Range of Sanctions</th>
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<td>Sexual Misconduct Constituting Sexual Assault</td>
<td>Dismissal/Termination</td>
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<tr>
<td>Sexual Misconduct Not Constituting Sexual Assault</td>
<td>Dismissal/Termination</td>
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<td>Suspension</td>
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<td>Probation</td>
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<td>Unwanted Sexual Touching</td>
<td>Dismissal/Termination</td>
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<td>Community Service</td>
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<td>Educational/Counseling</td>
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11.2. After reaching a decision on a recommendation for sanction(s), the Hearing Panel will reconvene and meet with the Sanctioning Official as soon as possible for the purpose of discussing and recommending an appropriate sanction.

11.3. After receiving the recommendation of the Hearing Panel, the Sanctioning Official shall decide upon an appropriate sanction and notify the Respondent in writing of the following:

11.3.1 That the sanction has been imposed;

11.3.2 The nature of the sanction; and

11.3.3 The right to appeal the outcome of the hearing and sanction pursuant to University policy.

11.4 Notice to the Respondent shall be in person, by University email or by U. S. Mail, to the Respondent’s last known address at the discretion of the Sanctioning Official with the intent that the notice be rendered by the most expedient and reliable means available. In the event personal notice is not accomplished, proof of emailing or posting with the U.S. Post Office shall constitute sufficient notice under this policy.

11.5 The Title IX Coordinator shall receive a copy of the Notice of Sanctions provided to the Respondent. The Director of Human Resources shall receive a copy of the Notice of Sanctions provided to the Respondent if the Respondent is a University employee.

11.6 The Title IX Coordinator shall provide notice that sanctions have been imposed to the Complainant. However, neither the nature nor extent of the sanctions will be disclosed, unless such is necessary to comply with the law or to promote the remedial interests and/or obligations of the University. Any disclosures to persons other than the Respondent deemed necessary shall be in accordance with all applicable federal and state laws, including FERPA with regard to students.

11.7 Any sanction imposed may be suspended pending appeal.

12.0 APPEALS

12.1 A party aggrieved by a decision of the Hearing Panel, or by the sanctions imposed, may file a Petition for Appeal within five (5) business days of notification of the final outcome.

12.2 The appeal must be sent to the Title IX Coordinator in writing and state with specificity the grounds that would justify consideration. General dissatisfaction
with the outcome of the proceeding is not a basis for appeal. The written appeal must address one of the following criteria:

12.2.1 An error in procedure, which prejudiced the process to the extent the participant, was denied a fundamentally fair hearing as a result of the error. Only significant procedural errors that may have affected the decision of the Hearing Panel or which relate to the sanction imposed will be considered.

12.2.2 New evidence that was previously unknown and is available during the appeal process that could substantially impact the original finding or sanction. A summary of this new evidence and its potential impact must be included with the notice of appeal.

12.2.3 Sanctions imposed that are beyond the articulated sanctioning matrix.

12.2.4 Clearly demonstrated bias of an investigator or hearing panel member.

An appeal which does not clearly raise one of these four criteria will be dismissed without further consideration.

12.3 After receiving a Petition for Appeal, the Title IX Coordinator shall inform the other party of the appeal and give the non-appealing party an opportunity to respond within five (5) business days. The Title IX Coordinator shall also inform the Sanctioning Official of the appeal as well as the Director of Human Resources if the Respondent is a University employee.

12.4 After receipt of the Petition for Appeal and any response, the Title IX Coordinator shall notify the General Counsel of the University, or his/her designee, who shall act as the Appeals Officer.

12.5 The Appeals Officer shall review the appeal and any response to determine if the appeal meets any of the limited grounds and is timely. Appeals decisions are to be deferential to the original hearing panel, making changes to the finding only if there is clear error and to the sanction only if there is a compelling justification to do so. The original finding and sanction will stand if the appeal is not timely or does not meet one of the above stated grounds. The Appeals Officer will render a written decision on the appeal to all parties within seven (7) business days from receipt of the appeal. The Appeals Officer will also provide a copy of the written decision on the appeal to the Sanctioning Official as well as the Director of Human Resources if the Respondent is a University employee. The Appeals Officer’s decision to deny appeal requests is final.

12.6 If the Appeals Officer determines that new evidence should be considered, he/she will return the complaint to the original hearing panel to reconsider in light of the new evidence, only. The reconsideration of the hearing panel is not appealable.
12.7 If the Appeals Officer determines that a material procedural error occurred, he/she may return the complaint to the original hearing panel with instructions to reconvene to cure the error. In rare cases, where the procedural error cannot be cured by the original hearing panel members (as in cases of bias), the Appeals Officer may order a new hearing on the complaint with a new body of hearing panel members. The results of a reconvened hearing cannot be appealed. The results of a new hearing can be appealed, once, on the four applicable grounds for appeals.

12.8 If the Appeals Officer determines that the sanctions imposed are beyond the articulated sanctioning matrix, the Appeals Officer will return the complaint to the original Sanctioning Official, who may then increase, decrease or otherwise modify the sanctions. This decision is final. The Sanctioning Official will follow the procedures outlined in 11.0 regarding notification to all parties and any appropriate University officials.

Review

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

Forms/Instructions

Appendices

Related Information

History

Amendment(s): Month, Day, Year – summary of changes
Authorization

RECOMMENDED BY:

[Signature]
Responsible University Administrator

[Signature]
Responsible University Officer

REVIEWED BY:

[Signature]
Director of Compliance

[Signature]
Office of General Counsel

APPROVED:

[Signature]
President

Date
3-26-13

Date
3/25/13

Date

3-26-13