

**UNIVERSITY OF MISSISSIPPI  
INTERPERSONAL VIOLENCE AND  
SEXUAL MISCONDUCT POLICY  
ACA.EO.100.022**

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**Policy Statement**

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The University of Mississippi is committed to fostering an environment that prevents violence, sexual harassment, and unwelcome sexual misconduct of employees, students, applicants for admission or employment, visitors to campus, or third parties. Prohibited conduct under this Policy includes sexual harassment, sexual assault, and certain forms of relationship violence. Violations of this Policy in any form will not be excused or tolerated. This Policy is implemented and enforced in compliance with applicable law including: the relevant provisions of the Violence Against Women Reauthorization Act of 2013; Title VII of the Civil Rights Act of 1964; the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act; and other applicable federal and state laws. The University also follows all intervention and crime reporting requirements for Policy violations under applicable law.

This policy protects all members of the University community. However, the procedures for formal complaints and subsequent actions are only applicable to **students** whose reported interpersonal violence and/or sexual misconduct falls outside of the University's Title IX policies and procedures. The procedures for formal complaints and subsequent actions applicable to **faculty and staff** whose reported interpersonal violence and/or sexual misconduct falls outside of the University's Title IX policies and procedures is found in a separate policy, the University of Mississippi's Non-Discrimination and Sexual Harassment Policy and Complaint Procedure.

Violations of this Policy in any form will not be excused or tolerated. The University adheres to effective, equitable, and fair procedures to investigate and adjudicate Interpersonal Violence and Sexual Misconduct complaints. The University reinforces this Policy by educating the University community on the importance of recognizing, reporting, and effectively responding to all forms of prohibited conduct. Special emphasis is placed on the rights, needs, and privacy of both parties to a complaint under this Policy. The University's Equal Opportunity & Regulatory Compliance (EORC) Office operates in an impartial and unbiased manner and does not advocate on behalf of either party. The University also adheres to all federal, state, and local requirements for intervention and crime reporting related to violations of this Policy.

The University employs a grievance process that rests on fundamental notions of fairness and due process protections so that determinations as to responsibility made at the conclusion of its grievance process are founded on facts and evidence. There is a presumption that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.

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## Purpose of Policy

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The University of Mississippi is committed to fostering an environment that prevents violence, sexual harassment, and unwelcome sexual misconduct of employees, students, applicants for admission or employment, visitors to campus, or third parties. Students, faculty, and staff should be able to live, study, and work in an environment free from sexual misconduct and violence. The purpose of this Policy is to provide students, faculty, and staff notice of the rights and protections afforded to them under this Policy and their continuing obligation to respect the dignity of each person by refraining from prohibited behaviors. This Policy outlines prohibited conduct, including unlawful discrimination based on sex and sexual harassment.

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## Sexual Harassment and Other Sexual Misconduct

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Pursuant to this Policy, the University of Mississippi prohibits sexual harassment and other forms of unwelcome sexual contact that occurs outside of the University's educational programs or activities, or within University's educational programs or activities outside the United States, in order to protect students, faculty, staff, and the University community as a whole. Sexual misconduct and sexual exploitation may vary in their severity and consist of a wide range of behaviors. These behaviors are serious violations and represent a threat to the safety of the University community.

The requirements of this Policy apply regardless of the sexual orientation and/or sexual identity of the individuals engaging in sexual activity. The following sexual misconduct violates this Policy, as well as the University's community standards and values of respect, civility, and personal integrity. The conduct may also be unlawful under applicable state or federal law.

Under this Policy, **sexual harassment** means either: (i) unwelcome sexual conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to an educational program or activity of the University; or (ii) sexual assault, dating violence, domestic violence, or stalking, as defined below.

- **Rape** is the carnal knowledge of a person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity. Carnal knowledge exists if there is the slightest penetration of the sexual organ of the female (vagina) by the sexual organ of the male (penis).
- **Sodomy** is oral or anal sexual intercourse with another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.
- **Sexual assault with an object** is the use of an object or instrument to penetrate, without the consent of the victim, however slightly, the genital or anal opening of

the body of another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical disability. An “object” or “instrument” is anything used by the offender other than the offender’s genitalia, e.g. a finger, bottle, stick.

- **Fondling** is the touching of the private body part of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical disability.
- **Incest** is sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- **Statutory rape** is intercourse with a person who is under the statutory age of consent.
- **Dating violence** means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be determined based on a consideration of the following factors: (i) the length of the relationship, (ii) the type of relationship, and (iii) the frequency of interaction between the persons involved in the relationship.
- **Domestic violence** includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the applicable jurisdiction, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.
- **Stalking** a course of conduct directed at a specific person that would cause a reasonable person to: (i) fear for his or her safety or the safety of others; or (ii) suffer substantial emotional distress.

The University’s definitions above are adopted from the FBI’s Uniform Crime Reporting Program.

- **Sexual Exploitation:** the University defines Sexual Exploitation to include the following behaviors that occur inside or outside a University program or activity, and includes but is 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, which 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

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## Consent

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For the purposes of this Policy, **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 knowingly, freely, voluntarily, and with an understanding of his or her actions when giving the consent. This definition of consent is premised on the idea that all persons in our University community have the right to feel respected, acknowledged, and safe during sexual activity.

Nonconsensual sexual activity is prohibited under this Policy and requires a showing that a participant knew or reasonably should have known that the other party did not consent to the sexual activity.

A person who willingly participates in sexual activity is responsible for obtaining consent for that sexual activity. Consent must be present throughout the sexual activity. Consent can be withdrawn by any participant at any time during the sexual activity. Accordingly, a participant to sexual activity can revoke consent through actions, conduct, or behavior that communicates that he or she no longer wishes to continue the existing sexual activity. Once consent is withdrawn, the sexual activity must cease immediately.

Although consent can be non-verbal (e.g. nodding), consent should never be assumed or inferred from silence, passiveness, or a lack of resistance. A lack of protest or the failure to resist does not constitute consent. 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 and consent is obtained. No sexual activity should occur without consent.

Consent to engage in a particular sexual activity with an individual is not consent to engage in all sexual activity with that individual, and consent to engage in a sexual activity with an individual on one occasion is not consent to engage in sexual activity at a later time.

Consent to engage in sexual activity with one person is not consent to engage in sexual activity with any other person.

Consent cannot result from force, or threat of force, coercion, fraud, or intimidation. The use of force or threat of force 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 may also involve physically exerting control of another person through any form of violence.
- Threats or threatening behavior 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 AND AGE OF CONSENT**

An incapacitated person lacks the ability to make a voluntary, informed, rational decision about whether to consent to sexual activity. A person may be incapacitated as a result of the consumption of alcohol or other drugs, because of sleep, unconsciousness, or due to a physical or mental impairment or health condition. It is a violation of this Policy if the initiator of a sexual activity has sex with someone the initiator knows, or reasonably should know, is incapacitated.

A person who is unconscious, unaware, or otherwise physically helpless cannot give effective consent to sexual activity. Someone is incapacitated when he or she engages in sexual activity when he or she cannot understand or appreciate who, what, when, where, why, or how with respect to the sexual interaction.

People manifest signs of incapacitation differently. Signs of incapacity may include but are not limited to: slurred or incomprehensible speech, a fixed gaze, incoherence, an unsteady manner of walking or the inability to walk or stand up straight, combativeness or emotional volatility, vomiting, or incontinence.

Age can be a form of incapacitation that renders a person unable to give consent. Under state law, a person between the ages of fourteen (14) and sixteen (16) lacks the legal capacity to consent to sexual intercourse with an individual seventeen (17) years or older, where that individual is at least thirty-six (36) months older than the person. Similarly, a student under the age of eighteen (18) lacks the legal capacity to consent to sexual activity with a person in a position of thrust or authority over the student, including, without limitation, the student's teacher, counselor, physician, psychiatrist, psychologist, minister, priest, physical therapist, chiropractor, legal guardian, parent, stepparent, aunt, uncle, scout leader or coach.

If a person is unsure about the presence of consent or incapacitation, the safe thing to do, with respect to a sexual interaction, is to forego the sexual activity. A party may not assert his or her own intoxication as grounds for being unable to recognize that another person was either incapacitated or did not otherwise give consent.

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## Reporting an Alleged Policy Violation

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Community members who believe they have, or believe someone they know has, experienced a potential Policy violation may submit a report in writing, in person, by mail, by telephone, by electronic mail, or by any other means that results in the Office of Equal Opportunity & Regulatory Compliance (“EORC”) receiving the report. Reports can be made at any time, including after business hours and on weekends, and by any person. The Office of Equal Opportunity and Regulatory Compliance (“EORC”) can be reached by telephone at (662) 915-7735, by emailing the EORC Office at [eeo@olemiss.edu](mailto:eeo@olemiss.edu), or on campus at 120 Lester Hall. Additional contact information for EORC is provided at the end of this Policy.

Any person may report sex discrimination, including sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment), in person, by mail, by telephone, or by electronic mail, using the contact information listed for EORC, or by any other means that results in EORC receiving the report. Such a report may be made at any time.

The **complainant** is an individual who is alleged to be the victim of conduct that could constitute sexual harassment. The **respondent** is an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment. Reporting a Policy violation is not the same thing as filing a formal complaint. For more information on how to file a formal complaint, please see the Filing a Formal Complaint section below.

Employees who are notified of an alleged incident involving a Policy violation or allegations of sexual harassment *must* report the incident to EORC immediately (no later than two calendar days). Employees include all University faculty and staff, except those who work or volunteer in the on campus UMatter: Student Support and Advocacy Office or Violence Intervention and Prevention Services, and those with a statutory privilege, including but not limited to those providing counseling or healthcare services through the University Counseling Center, Student Health Services, and/or Psychological Services Center. Those University employees who work or volunteer in the University Counseling Center, Student Health Services, and/or Psychological Services Center are considered confidential employees for the purposes of this Policy. Confidential employees are not required to report an alleged incident to EORC unless there is a reasonable threat to campus safety. However, those employees with a mandatory obligation under University policy or applicable law to report Policy violation allegations to EORC must do so, even where an individual requests confidentiality.

While maintaining confidentiality, employees and staff within Violence Intervention and Prevention Services or the UMatter: Student Support and Advocacy Office must report the nature, date, and general location of an incident to EORC, along with a list of any supportive measures that were provided. This limited report – which includes no information that would directly or indirectly identify the student – helps keep EORC informed of the general extent and nature of the alleged sexual violence on and off campus so EORC can track patterns, evaluate the scope of the problem, if any, and formulate appropriate campus-wide responses, if necessary.

Although the Violence Intervention and Prevention Services staff and the U-Matter: Student Support and Advocacy staff generally maintain a person's confidentiality and privacy within the University, they may have certain reporting or other obligations under state or federal law, including an obligation to respond to lawfully issued subpoenas. If the Violence Intervention and Prevention Services staff or U-Matter: Student Support and Advocacy staff believe that an individual may pose a serious and immediate threat to the University community, the University Police Department should be informed so that it can determine if a timely warning to the University community is appropriate. Any such warning should not include any information that identifies the person reporting the information.

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 reports or formal complaints for the purposes of this Policy, nor are such events and forums 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' rights at these events.

Students are encouraged to immediately seek medical attention and contact the University Police Department at (662) 915-7234 if they believe they have been sexually assaulted. Students are strongly encouraged to seek medical attention even if they do not wish to pursue criminal charges or otherwise pursue a complaint under this Policy.

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## **Supportive Measures**

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Supportive measures are non-disciplinary, non-punitive, individualized services offered by the University as appropriate, as reasonably available, and without fee or charge, to either party before or after the filing of a formal complaint, or where no formal complaint has been filed. Such measures are designed to restore or preserve access to the University's educational programs or activities without unreasonably burdening the other party, including measures designed to protect the safety of all parties and the University's educational environment, and deter sexual harassment.

Supportive measures may include, but are not limited to:

- Counseling
- Extensions of deadlines or other course-related adjustments
- Modifications of work or class schedules
- Campus escort services
- Mutual restrictions on contact between the parties
- Changes in work or housing locations
- Leaves of absence
- Temporary residence in a University safe room
- Parking accommodations
- Increased security and monitoring of certain areas of the campus

- Other similar measures

The University must maintain as confidential any measures provided to the complainant or the respondent to the extent that maintaining such confidentiality would not impair the ability of the University to provide the supportive measures. Any potential party seeking supportive measures from the University may contact EORC. Alternatively, an individual who has filed a formal complaint or is considering filing a complaint may seek supportive measures through Violence Intervention and Prevention Services, while an individual who is responding to a formal complaint may seek supportive measures through U Matter: Student Support and Advocacy.

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## **Violence Intervention and Prevention Services**

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Violence Intervention and Prevention Services at the University of Mississippi is an on-campus resource that promotes awareness of the realities of sexual assault, relationship violence, stalking, and other forms of sexual misconduct. This program also provides education and training to students, faculty, and staff concerning these topics. Additionally, Violence Intervention and Prevention Services serves as confidential advocacy to assist complainants and potential complainants of sexual misconduct and other interpersonal violence, and as a liaison between the University of Mississippi and local resource groups.

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

Individuals who work or volunteer in Violence Intervention and Prevention Services, 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.

For a listing of available resources, please visit the website <http://umsafe.olemiss.edu>. To request an educational program or for further assistance, please contact Violence Intervention and Prevention Services at (662) 915-1059.

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## **UMatter: Student Support and Advocacy**

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The U Matter: Student Support and Advocacy Office at the University of Mississippi is an on-campus resource that serves as the official office for finding resources and information on how



students can care for themselves and their peers when in distress. The U Matter: Student Support and Advocacy Office also serves as a confidential advocate to assist respondents and those alleged to have committed sexual misconduct, and as a liaison between the University of Mississippi and local resource groups. The U Matter: Student Support and Advocacy Office operates under the presumption that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of this Policy's grievance process.

For a listing of available resources, please visit the website <http://umsafe.olemiss.edu>. For further assistance, please contact the U Matter: Student Support and Advocacy Office at (662) 915-7248.

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## Filing a Formal Complaint

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The **complainant** is an individual who is alleged to be the victim of conduct that could constitute sexual harassment. The **respondent** is an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment. Under this Policy, a complainant may file a formal complaint for sexual harassment against a respondent.

A **formal complaint** is a document alleging sexual harassment against a respondent and requesting that the University investigate the allegation of sexual harassment. For the purposes of this Policy, "document" means a document or electronic submission (such as by electronic mail) that contains the complainant's physical or digital signature, or otherwise indicates that the complainant is the person filing the formal complaint.

A formal complaint may be filed with the Assistant Director of EORC in person, by mail, or by electronic mail, by using the following contact information provided for the Assistant Director of EORC:

Honey Ussery  
Assistant Director of EORC  
University of Mississippi  
Post Office Box 1848  
120 Lester Hall  
P: (662) 915-7735  
F: (662) 915-1229  
[hbussery@olemiss.edu](mailto:hbussery@olemiss.edu)  
[eeo@olemiss.edu](mailto:eeo@olemiss.edu)

Complainants may file a formal complaint without meeting with the Assistant Director of EORC in person, so long as the complaint: (i) contains the complainant's physical or digital signature or otherwise indicates that the complainant is the person filing the formal complaint, (ii) alleges

sexual harassment against the respondent, and (iii) requests that the University investigate the allegations.

Any individual seeking to file a formal complaint or looking to explore the option of filing a formal complaint should contact the Assistant Director of EORC.

For information on how to make a report of sexual misconduct or relationship violence with the Assistant Director of EORC, please see the Reporting an Alleged Policy Violation section above.

There are two situations in which the University may initiate its grievance procedures: (i) where a formal complaint has been filed by a complainant, or (ii) where the Assistant Director of EORC has decided to initiate the grievance process on behalf of the University after making a determination that an investigation is objectively warranted.

### **A FORMAL COMPLAINT SIGNED BY THE ASSISTANT DIRECTOR OF EORC**

The Assistant Director of EORC may sign a formal complaint against a respondent. Where the Assistant Director of EORC signs a formal complaint, the Assistant Director is not a complainant or otherwise a party to the grievance process and must comply with the requirements of the grievance process outlined in this Policy.

Any decision to initiate this Policy's grievance process in situations where the complainant does not want an investigation or where the complainant intends not to participate is made thoughtfully and intentionally by the Assistant Director of EORC, taking into account the circumstances of the situation, including the reasons why the complainant wants or does not want the University to investigate. The Assistant Director of EORC is trained with the special responsibilities that involve interacting with complainants, enabling the Assistant Director of EORC to make these decisions. Other University administrators and community members may report sexual harassment incidents to the Assistant Director of EORC and may express to the Assistant Director reasons why the administrator or community member believes that an investigation is warranted, but the decision to initiate a grievance process is one that the Assistant Director of EORC must make. As such, the Assistant Director of EORC may determine that a fair, impartial investigation is objectively warranted as part of the University's obligation to respond to sexual harassment allegations.

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## **The Right to an Advisor**

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The complainant and the respondent have the right to have an **advisor** of their choice, who may be, but is not required to be, an attorney, present throughout the entire grievance process. At any time during the grievance process, both parties may choose their own advisors or may request that the University provide them an advisor at no cost or fee.

An advisor for either the complainant or respondent may: (i) accompany the party to any meeting or proceeding during this Policy's grievance process; (ii) assist the party with the gathering of evidence during an investigation into a violation of this Policy; (iii) assist the party with inspecting and reviewing evidence gathered by the Investigator(s); (iv) be asked by the respective party to assist in making meaningful written responses to the information gathered throughout the investigative process; (v) attend the live hearing and conduct cross-examination, orally and in real time; and (vi) may be asked by the respective party to assist in submitting a written statement in support of, or challenging, the outcome of the live hearing, if necessary.

The University will not limit the choice or presence of the advisor for either the complainant or respondent in any meeting or grievance proceeding but may impose restrictions on the extent to which the advisor may participate in the proceedings. Any and all such restrictions will apply equally to complainants and respondents. The Investigation Process and Hearing Process sections of this Policy further discuss the roles and responsibilities of advisors with additional specificity.

#### **ADVISORS DURING A LIVE HEARING**

The right to have an advisor present throughout the hearing process extends to live hearings as well, if one occurs. If a party does not have an advisor present at the hearing, the University will provide that party an advisor. At the live hearing, each party's advisor will be permitted to ask the other party and any witnesses all relevant questions and follow-up questions, including those that challenge credibility.

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## **The Investigation Process**

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The EORC Office at the University operates in an impartial and unbiased manner and does not advocate on behalf of the individualized interests of the complainant or the respondent. Throughout the information gathering process, the Assistant Director of EORC and Investigator(s) maintain objectivity, and the Investigator(s) conduct any investigation resulting from a formal complaint under the presumption that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.

#### **RECEIPT OF A FORMAL COMPLAINT**

Upon receipt of a formal complaint, the EORC Office will provide written notice to the parties of the allegations contained in the complaint, along with notice of the University's grievance procedures. The **notice of allegations** will include sufficient details about the allegations potentially constituting sexual harassment under this Policy and will provide the parties sufficient time to prepare a response before any initial interview. These details will include, to the extent known, the identities of the parties involved in the incident, the conduct allegedly constituting a Policy violation, and the date and location of the alleged incident.

The notice of allegations will also specify that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process. The notice will additionally inform the parties that they may have an advisor

of their choice who may be, but is not required to be, an attorney, and that the parties may inspect and review evidence as provided for in this Policy.

If, after the initial notice is disseminated, the University decides to investigate allegations about the complainant or the respondent that are not included in the initial notice of allegations, or if new details pertaining to the allegations are discovered, all known parties will be given notice of the additional allegations or the newly discovered details.

**INFORMATION GATHERING**

The Investigator(s) will attempt to interview the complainant and the respondent of the alleged incident. Additionally, the Investigator(s) will request from both parties any information and evidence that is directly related to the allegations under investigation, including the names of potential witnesses to interview. The complainant and respondent will also be given equal opportunity to present witnesses during the investigation process, including fact and expert witnesses, and other inculpatory and exculpatory evidence. Both parties will also have the ability to discuss the allegations under investigation with the Investigator(s) and to gather and present relevant evidence, and the EORC Office will not restrict these abilities. Similarly, the complainant and the respondent will be given the same opportunity to have others present during any meeting that takes place during the investigation process, which includes the opportunity to be accompanied by an advisor of their choice or an advisor provided by the University. While gathering information, the Investigator(s) will not make determinations regarding credibility of the parties or witnesses, and will objectively evaluate evidence.

With respect to parties or witnesses whose participation is invited or expected, the EORC Office will provide written notice of the date, time, location, participants, and purpose of the investigative interview or other meeting, and will provide sufficient time for these individuals to prepare to participate.

The Investigator(s) will also provide both parties an equal opportunity to inspect and review evidence obtained as part of the investigation that is directly related to the allegations raised in the formal complaint, including evidence upon which the University does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence before the conclusion of the investigation.

**THE INVESTIGATIVE REPORT**

Prior to completion of the investigative report, the Investigator(s) will send to each party and the party’s advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy, and the parties will have ten (10) days to submit a written response, which the Investigator will consider prior to completion of the investigative report. The EORC Office will make all such evidence subject to the parties’ inspection and review available at any hearing to give each party equal opportunity to refer to such evidence during the hearing.

Once the Investigator(s) have considered the parties' written responses, if any, and the investigation process has concluded, the Investigator(s) will create an **investigative report** that fairly summarizes relevant evidence. The report will not contain findings of fact as to whether a Policy violation did or did not occur but will instead contain a summary of the investigation and all relevant documents submitted by the parties and potential witnesses. The Assistant Director of EORC and/or Investigator(s) will determine whether a piece of evidence is relevant and thus included in the investigative report.

At least ten (10) days prior to a hearing, if a hearing is required or provided, or other time of determination regarding responsibility, the EORC Office will send to each party and the party's advisor, if any, the final investigative report in an electronic format or hard copy, for their review and written response.

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## **Timeframes**

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The University is committed to the reasonably prompt resolution of a formal complaint of sexual harassment so that parties to an Interpersonal Violence and Sexual Misconduct case are not required to wait longer than necessary to know the resolution of a formal complaint of sexual harassment. Accordingly, these cases will generally be adjudicated within ninety (90) business days from the date that the Assistant Director of EORC is notified of the complaint.

The Investigator(s) will make every effort to investigate the allegations raised in a formal complaint but will not allow speed to interfere with the quality of the investigation. The time required to conduct a thorough and complete investigation will vary depending upon, among other things, the complexity of the allegations, the availability or absence of the parties or witnesses, the number of witnesses, the volume of documentary evidence that must be reviewed or gathered, break periods and periods where the University is either on break or closed, or concurrent law enforcement activity that may require the University to suspend its investigation or other proceedings in deference to law enforcement activity.

The timeframe for the resolution of a formal complaint may be extended for good cause with written notice to the parties and an explanation for the delay. **Good cause** includes, but is not limited to, considerations such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities.

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## **Informal Resolution Process**

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At any time prior to the Independent Decision-Maker reaching a determination regarding the respondent's responsibility, the Assistant Director of EORC may offer to facilitate an informal resolution process, such as **mediation**, that does not involve a full investigation and adjudication of the complainant's allegations. The informal resolution process is only available after a formal complaint has been filed.

If the complainant and respondent are interested in pursuing informal resolution of a complaint, both parties will be notified of the allegations, the requirements of the informal resolution process, including any circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations, and any consequences resulting from participation in the informal resolution process, including what records will be maintained and shared. Before an informal resolution process may proceed, the complainant and the respondent must voluntarily agree to the process in writing. The parties cannot be compelled to participate. Before reaching an agreement through the mediation process, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint. If, however, the parties reach an agreement during this process, the terms of the **mediation agreement** will be memorialized 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 the agreement being voided.

If the parties are unable to reach an agreement through the informal resolution process, the investigation and/or adjudication process will resume.

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## **Pre-Hearing Conference**

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Once the investigative report has been made available to the parties and their advisors, if any, the EORC Office will schedule an individual **pre-hearing conference** with both the complainant and the respondent. During the pre-hearing conference, the parties will be informed of their rights and will be instructed on the remainder of the Interpersonal Violence and Sexual Misconduct grievance process. In addition, both parties will be asked to provide the names of any advisors and witnesses who they anticipate will participate in the live hearing, should a hearing take place. Additional meetings with the complainant or respondent will be scheduled if necessary.

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## **The Hearing Process**

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If the parties have not agreed to the informal resolution process, and other circumstances do not prevent a case from moving forward, the matter will be resolved by the University's designated Independent Decision-Maker through a live hearing.

The Independent Decision-Maker reaches a determination as to the respondent's responsibility, but operates under the presumption that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.

### **DETERMINING THE TIME AND LOCATION OF THE HEARING**

After the pre-hearing conference, the designated Hearing Clerk will work with the complainant, respondent, advisors, witnesses, and the Independent Decision-Maker for the University to determine the time and location of the live hearing.

## **THE LIVE HEARING**

The live hearing will take place on the date and time agreed to by the complainant and respondent. A **live hearing** does not require that the parties, the Independent Decision-Maker, or other individuals participating in the hearing process meet face to face at the same geographic location. Live hearings may be conducted with all parties physically present in the same geographic location or, at the University's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually, with technology enabling participants simultaneously to see and hear each other. Additionally, at the request of either the complainant or the respondent, the University will facilitate the live hearing with the parties located in separate rooms with technology enabling the Independent Decision-Maker and the parties to simultaneously see and hear the party or witness answering questions. Live hearings are closed proceedings and not open to the public.

The Independent Decision-Maker will preside over the live hearing and is vested with the authority to maintain the order of the parties, participants, and proceedings. At the beginning of the live hearing, the Independent Decision-Maker will give an overview of the hearing process. During the hearing, the complainant and respondent will have the opportunity to present and challenge evidence. If the Independent Decision-Maker makes any credibility determinations about a hearing participant, those determinations will not be based on a person's status as a complainant, respondent, or witness.

The complainant and the respondent are permitted to make an **opening statement** to the Independent Decision-Maker at the beginning of the live hearing. Similarly, both parties are permitted to make a **closing argument** to the Independent Decision-Maker at the conclusion of the live hearing. Either party may elect to have their advisor make their opening statement, closing argument, or both. The opening statement and closing argument each must not exceed ten (10) minutes in length.

The EORC Office will make any such evidence that was subject to the parties' inspection and review prior to the completion of the investigative report available at any hearing to give each party equal opportunity to refer to such evidence during the hearing, including for the purposes of cross-examination.

## **CROSS-EXAMINATION AND RELEVANCE OF EVIDENCE**

All evidence presented during the live hearing, as well as all questions asked during the cross-examination portions of the live hearing, must be relevant. A piece of evidence or a cross-examination question is **relevant** if (i) it has any tendency to make a fact more or less probable than it would be without the evidence; and (ii) the fact is of consequence in determining the case.

The Independent Decision-Maker may ask questions and will permit each party's advisor to ask questions, and follow up questions, including those that challenge credibility, but all questions asked during such **cross-examination** must be relevant. Cross-examination at the live hearing

must be conducted directly, orally, and in real time by the party's advisor and never by a party personally. If a party does not have an advisor present at the hearing, the University will provide that party an advisor of the University's choice at no cost to that party. If the Independent Decision-Maker makes any credibility determinations about a hearing participant, those determinations cannot be based on a person's status as a complainant, respondent, or witness.

Before a complainant, respondent, or witness answers a cross-examination or other question, the Independent Decision-Maker must first determine whether the question is relevant and will explain any decision to exclude a question as not relevant. All questions and evidence about the complainant's sexual behavior or predisposition are irrelevant and therefore must be excluded from evidence during the live hearing, unless: (i) such evidence about the complainant's sexual behavior is offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or (ii) the evidence concerns specific incidents of the complainant's sexual behavior with respect to the respondent and is offered to prove consent.

#### **IF A PARTY OR WITNESS DOES NOT SUBMIT TO CROSS-EXAMINATION**

If a party or witness does not submit to cross-examination at the live hearing, the Independent Decision-Maker must not rely on any statement of that party or witness in reaching a determination regarding responsibility; provided, however, that the Independent Decision-Maker cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions.

If the Independent Decision-Maker asks questions, and a party or witness refuses to respond to the Independent Decision-Maker's questions, the Independent Decision-Maker is not precluded from relying on that party or witness's statements. The Independent Decision-Maker's neutral, fact-finding questions are different than cross-examination questions.

#### **INVESTIGATOR AS A WITNESS**

The Investigator(s) may be called as a witness by either party or the Independent Decision-Maker to present information regarding the investigation. As with any witness, the Investigator(s) will not testify whether a Policy violation occurred nor be asked his or her opinion about the respondent's responsibility or lack thereof but will only testify to his or her first-hand knowledge of the facts gathered during the investigation. In addition, the Investigator(s) may testify as to any factual inconsistencies found during the investigation.

#### **STANDARD OF EVIDENCE TO BE APPLIED**

In reaching a determination regarding responsibility, the Independent Decision-Maker will apply a **preponderance of the evidence standard**. This standard requires a showing that a particular party's evidence is more credible or convincing than that presented by the other party, or a showing that the fact to be proven is more probable than not.



## THE DECISION OF THE INDEPENDENT DECISION-MAKER

The decision of the Independent Decision-Maker regarding the respondent's responsibility as well as possible sanctions will be determined within two (2) business days of the completion of the live hearing.

The Independent Decision-Maker will issue a **written determination regarding responsibility**, which will include: (i) identification of the allegations potentially constituting sexual harassment; (ii) a description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, and methods used to gather other evidence, and hearings held; (iii) findings of fact supporting the determination; (iv) conclusions regarding the application of the University's Policy to the facts; (v) a statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the University will impose on the respondent, if any, and whether remedies designed to restore or preserve equal access to the University's education program or activity will be provided by the University to the complainant; and (vi) the University's procedures and permissible bases for the complainant or the respondent to appeal the decision. The complainant and the respondent will be notified of the hearing panel's determination simultaneously.

The determination regarding responsibility becomes final on the date that the University provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.

## RECORDING THE LIVE HEARING

The Independent Decision-Maker will create an audio recording, audiovisual recording, or transcript, of any live hearing and make it available to the parties for inspection and review.

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## Disciplinary Sanctions

The University's Interpersonal Violence and Sexual Misconduct Policy encompasses a wide range of prohibited conduct. As such, depending upon the facts and circumstances of a particular Policy violation, sanctions resulting from a finding of responsibility may range from a verbal reprimand to expulsion from the University. Sanctions are enforced immediately upon determination of the violation.

The following list encompasses all possible sanctions that may be imposed by the University:

- **Oral reprimand:** An oral statement of disapproval with or without written follow-up communication.

- **Written reprimand:** A written notice to the respondent of the inappropriate nature of the conduct.
- **Disciplinary probation:** Probation accompanied by a written reprimand to the respondent for violation of the Interpersonal Violence and Sexual Misconduct Policy. Probation is for a definite period of time and includes the possibility of more severe sanctions if the respondent is found responsible for violating any other University rules and regulations during the probationary period.
- **Loss of privileges:** Denial of specified privileges for a designated period of time. This may include, but is not limited to, loss of visitation rights, denial of participation in specific programs, denial of participation in University-related organizations or groups, denial of the right to attend University-sponsored events, and denial of access to campus resources or facilities.
- **Restitution:** Reasonable compensation for loss, damage, or injury to the appropriate party. Restitution may take the form of community service, monetary compensation, or material replacement.
- **Community service:** Assignments for the benefit of the University or community. Community service assignments must be approved by the Assistant Director of EORC.
- **Assessment:** A respondent may be required to attend sessions with a counselor for an assessment, either through the University's Counseling Center, Student Health Services, or an outside provider.
- **Substance abuse education:** A respondent may be required to meet with a substance abuse educator or attend programs designed to help the student deal with substance abuse issues and learn from the experience.
- **Educational project(s):** A respondent may be required to participate in educational projects that will enhance the educational impact of the grievance process on the respondent, which may include oral or written reports to the Assistant Director of EORC. Educational sanctions are designed to increase the respondent's understanding of how his or her behavior affects others.
- **Suspension:** Separation of the respondent from the University for a definite period of time, after which the student is eligible to return. Conditions for readmission may be specified. This sanction will be noted on the academic transcript of the respondent. Academic coursework completed during a respondent's suspension will not be accepted as transfer credit.

- **Expulsion:** Permanent separation of the respondent from the University community without the possibility of readmission. This sanction will be noted on the academic transcript of the respondent.
- A **combination** of any of the above sanctions.

**Other remedies:** Though not a disciplinary sanction, the Independent Decision-Maker may order remedies which are designed to restore or preserve equal access to the University's education program or activity by the University to the complainant.

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## Appeals

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If a party wishes to appeal a determination regarding responsibility, including sanctions, or a dismissal of a formal complaint or any allegations therein, that party may submit a written appeal to the Appellate Consideration Board for the University within ten (10) business days.

### **BASES FOR AN APPEAL**

The University will offer both parties an appeal from a determination regarding responsibility, including sanctions, and from the University's dismissal of a formal complaint or any allegations therein, on the following bases:

- Procedural irregularity that affected the outcome of the matter;
- New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter;
- The Assistant Director of EORC, Investigator(s), or Independent Decision-Maker had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter;
- The grievance process described in the University's Interpersonal Violence and Sexual Misconduct Policy was not followed;
- The conduct alleged does not fall within the jurisdiction of the University's Interpersonal Violence and Sexual Misconduct grievance process; or
- The sanctions imposed by the Independent Decision-Maker were not appropriate for the violation that the respondent was found to have committed.

### **AFTER AN APPEAL HAS BEEN FILED**

The non-appealing party will be notified in writing when an appeal is filed. The complainant and respondent will be provided a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome of the grievance proceeding giving rise to the appeal. The decision-maker for the appeal will not be the Assistant Director of EORC, Investigator(s), nor the Independent Decision-Maker that reached the determination regarding responsibility or dismissal of a complaint giving rise to the appeal.

## **REVIEW BY THE APPELLATE CONSIDERATION BOARD**

The Chancellor of the University has delegated final authority of review to the Appellate Consideration Board. The Appellate Consideration Board will review the written request for appellate consideration, the case file, and any audio recording, audiovisual recording, or transcript of the live hearing. The Appellate Consideration Board may request new information or material from the complainant, respondent, Independent Decision-Maker, conduct officers, Assistant Director of EORC, Investigator(s), or witnesses. In determining the merit of an appeal, the Appellate Consideration Board will not substitute its judgment for the decision of the Independent Decision-Maker that presided over the live hearing.

## **THE DECISION OF THE APPELLATE CONSIDERATION BOARD**

After reviewing the appeal and the documents related to a case, the Appellate Consideration Board will make a decision based upon the basis or bases of the appeal.

For appeals based on a claim of **procedural irregularity** that affected the outcome of the matter, the Appellate Consideration Board may: (i) reduce or change the sanction to something similar or less than the original sanction, (ii) remand the case to the Independent Decision-Maker with specific questions and/or instructions to consider, or (iii) remand the case to a new designated Independent Decision-Maker for a new live hearing.

For appeals based on a claim of **new evidence** that was not reasonably available at the time the determination regarding responsibility was made, which affected the outcome of the matter, the Appellate Consideration Board may: (i) uphold the decision and/or sanction as the new evidence would not affect the rationale of a designated Independent Decision-Maker, or (ii) remand to the Independent Decision-Maker with specific instructions concerning the review of the new material.

For appeals based on a claim that the Assistant Director of EORC, Investigator(s), or Independent Decision-Maker had a **conflict of interest or bias** for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter, the Appellate Consideration Board may: (i) uphold the decision and/or sanction as the conflict of interest or bias did not affect the outcome of the matter, or (ii) remand the case to a new designated Independent Decision-Maker for a new hearing.

For appeals based on a claim that the **grievance process** described in the University's Interpersonal Violence and Sexual Misconduct Policy was not followed, the Appellate Consideration Board may: (i) uphold the decision and/or sanction, (ii) remand the case to the Independent Decision-Maker with specific instructions, or (iii) remand the case to a new designated Independent Decision-Maker for a new hearing.

For appeals based on a claim that the conduct alleged does not fall within the **jurisdiction** of the University's Interpersonal Violence and Sexual Misconduct grievance process, the Appellate Consideration Board may: (i) uphold the decision and/or sanction, (ii) remand the case to the

Independent Decision-Maker with specific instructions, or (iii) remand the case to a new designated Independent Decision-Maker for a new hearing.

For appeals based on a claim that the **sanctions** imposed by the Independent Decision-Maker were not appropriate for the violation that the respondent was found to have committed, the Appellate Consideration Board may: (i) reduce or change the sanction to something similar or less than the original sanction, or (ii) remand to the Independent Decision-Maker with specific questions and/or instructions to consider.

The Appellate Consideration Board will issue a written decision describing the appeal and the rationale for the result, which will be provided to the parties simultaneously.

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## **Emergency Removal of a Respondent**

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The University maintains the authority to remove a respondent from its educational programs or activities on an emergency basis if, after undertaking an individualized safety and risk analysis, it is determined that a respondent poses an immediate threat to the physical health or safety of any students or other individual arising from the allegations of sexual harassment that justifies removal, and the University provides the respondent with notice and an opportunity to challenge the decision immediately following the removal.

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## **Amnesty**

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To encourage University community members to timely seek medical care and to promptly report allegations of sexual harassment and other conduct prohibited by this Policy, the University offers amnesty to those individuals the EORC Office learns has voluntarily consumed alcohol or other drugs relating to the alleged incident under investigation. Students who have consumed or possessed alcohol or drugs during the circumstances related to or involving the incident alleged in a Interpersonal Violence and Sexual Misconduct report or formal complaint will not face conduct proceedings nor be otherwise sanctioned for such conduct under the University's drug and alcohol policies. This amnesty extends to complainants, respondents, and any witnesses making a report, formal complaint, or participating in an investigation or proceeding in any manner pursuant to this Policy.

The University may require an individual to undergo non-punitive alcohol or drug education or training if it appears to the Assistant Director of EORC that the individual may be at risk with regard to the health and safety and/or social complications that accompany the repeated and excessive use of alcohol or drugs.

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## **Retaliation**

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Retaliation against an individual who initiates a complaint alleging a violation of this Policy, participates in an investigation, or pursues legal action, is prohibited. Accordingly, the University nor any person may intimidate, threaten, coerce, or discriminate against any individual for the

purpose of interfering with any right or privilege secured by law or this Policy, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this Policy. Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by law or this Policy, constitutes retaliation.

The exercise of rights protected under the First Amendment does not constitute retaliation prohibited under this provision. Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding under this provision does not constitute retaliation, provided, however, that a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.

Any person, whether a complainant, respondent, or witness, who is concerned they have experienced retaliation may file a complaint under this Policy, which the EORC Office will promptly investigate. The Assistant Director of EORC may implement supportive measures or take other remedial action in response to allegations or threats of retaliation prohibited by this Policy. These measures may include, but are not limited to academic accommodations, No Contact directives, changes in course schedules, and modifications to housing assignments.

Disciplinary sanctions may be issued against anyone determined to have engaged in retaliation, including individuals who are acting on behalf of the respondent or complainant, with or without the knowledge of the complainant or respondent.

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## **Confidentiality and Privacy**

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The University will keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a formal complaint of sexual harassment, any complainant under this Policy, and individual who has been reported to be the perpetrator of sex discrimination, any respondent, and any witness in a Interpersonal Violence and Sexual Misconduct grievance process. Confidentiality will be maintained, except where a disclosure is required by applicable law or necessary for the conduct of any investigation, hearing, or proceeding under this Policy.

Even where an individual requests privacy or confidentiality, employees who receive a report of sexual misconduct must share that information with the Assistant Director of EORC unless otherwise exempt by state or federal law or other University policy. This disclosure is necessary because the employee may have a continuing obligation to maintain campus safety. The Assistant Director of EORC will then determine whether further investigation is warranted, notwithstanding the request for privacy or confidentiality.

A complainant has the autonomy to decide whether or not to file a complaint and whether or not to participate in a Interpersonal Violence and Sexual Misconduct grievance process. However, the Assistant Director of EORC may determine that the circumstances of an alleged incident are so severe or that the allegations otherwise indicate there is an ongoing 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. The Assistant Director of EORC has the discretion to proceed with an investigation into a potential violation of this Policy, without the complainant's involvement, by signing a formal complaint against the respondent.

When determining whether to proceed without cooperation from the complainant, the Assistant Director of EORC will weigh a number of factors. Examples of factors the Assistant Director of EORC will consider include: 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; whether the respondent is in a position of authority over the complainant; whether the allegations involve violence or serial predatory conduct and the University's ability to move forward with the investigation without the complainant.

If the Assistant Director of EORC 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 Assistant Director of EORC will inform the complainant, to the extent possible, of individuals with whom information about the complaint will be shared.

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## Contact Information

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The University's Office of EORC oversees policies and procedures that apply to reports and formal complaints alleging sex discrimination (including sexual harassment, sexual assault, and sexual violence) by employees, students or third parties. Responsibilities performed in this Policy by "the Assistant Director of EORC" may be performed by the Assistant Director of EORC, or by another University employee trained by, and acting under the supervision of, the Assistant Director of EORC. Contact information for The University of Mississippi's Office of EORC is listed below.

Office of Equal Opportunity & Regulatory Compliance	eeo@olemiss.edu
P.O. Box 1848	P: (662) 915-7735
120 Lester Hall	F: (662) 915-1229