

## Attachment F

# SEXUAL HARASSMENT POLICY Jackson State University

### COVERAGE

This policy is applicable to University employees, students, or other individuals participating in University programs, activities, and contracts.

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### I. POLICY STATEMENT

It is the policy of Jackson State University (“University”) not to discriminate against any person on the basis of gender in violation of any applicable law, including but not limited to, Title VII of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000e), and Title IX of the Education Amendments of 1972 as well as its implementing regulations (34 CFR Part 106).

It is the policy of the University not to discriminate on the basis of gender in the educational programs and activities that it operates. This prohibition against gender-based discrimination extends to all University educational program, and activities, as well as to admission into such programs and activities.

The University is committed to fostering a positive working and educational environment in which there exists mutual respect for all University students, faculty, and staff. Harassment of employees or students based upon sex is inconsistent with this objective and contrary to the University policy of equal employment and academic opportunity without regard to race, color, national origin, sex, age, or disability. Sexual harassment is illegal, and will not be tolerated within the University. It is the policy of the University that no member of its community shall sexually harass another. Any employee or student who violates this policy will be subject to disciplinary action up to and possibly including separation from the University.

Members of the University Community who believe that this policy has been violated are strongly encouraged to report the allegations of sexual harassment as promptly as possible. Delay in making a complaint of sexual harassment may make it more difficult for the University to investigate the allegations.

While it is the responsibility of the University to disseminate this Policy, it is the responsibility of each member of the University Community to read the Policy and to become familiar with its provisions. Moreover, failure to follow the procedures set forth in this Policy may inhibit or prevent the University from properly investigating an instance of alleged sexual harassment or gender discrimination, and from taking remedial

action. Therefore, if an alleged victim fails to follow such procedure he or she may be left without a remedy under this Policy.

The University considers all allegations of sexual harassment to be extremely serious matters. Every written complaint of sexual harassment submitted to the University in accordance with this Policy will be reviewed and investigated. The submission of false, spurious, or frivolous claims, however, will result in the immediate consideration of disciplinary action, up to and possibly including termination, or in the case of a student, suspension, or expulsion. Additionally, in any legal action precipitated by a violation of this Policy where the University and a member of the University Community are named as "co-defendants," the University may refuse to defend and/or indemnify any co-defendant who is responsible for that violation.

**THIS POLICY IS APPLICABLE TO SEXUAL HARASSMENT IN EMPLOYMENT AND TO BOTH SEXUAL HARASSMENT AND OTHER GENDER-BASED DISCRIMINATION IN EDUCATIONAL PROGRAMS AND ACTIVITIES.**

The University's Office of Human Resources is primarily responsible for implementing this Policy for University employees who are of non-academic rank and for ensuring that all employees are adequately trained or otherwise made aware of their responsibilities under this Policy.

The Provost for Academic Affairs is primarily responsible for implementing this Policy for University students and employees who are of academic rank named as offenders in pursuant to this Policy, and also for ensuring that all such persons are adequately trained or otherwise made aware of their responsibilities under this Policy.

## **II. DEFINITIONS AND EXAMPLES**

### **A. To Whom This Policy Applies**

This Policy applies to all members of the University Community. The actions proscribed by this Policy are also applicable to all individuals who are on University premises or on any other property where the University conducts its business. If such an individual commits an act in violation of this Policy, the University will take appropriate remedial measures under the circumstances to sanction the offender, to mitigate against the potential for recurrence, and to discipline any member of the University Community who may have participated in such conduct or may have failed to stop such conduct when he or she had the authority to do so.

### **B. Sexual Harassment**

With respect to University employees as well as academic programs and activities, the term "sexual harassment" shall mean unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

- (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
- (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or as the basis for

participation in a University program or activity, or status in an academic course;  
or

(3) such conduct is so pervasive or severe that it has the purpose or effect of unreasonably interfering with an individual's work performance or educational opportunity so as to create an intimidating, hostile, or offensive environment.

In determining whether alleged conduct constitutes sexual harassment, the University will look at the record as a whole and at the totality of the circumstances, such as the nature of the sexual advances and the context in which the alleged incidents occurred. A determination of the appropriateness of a particular action will be made from the facts on a case-by-case basis.

### **C. Employment**

For purposes of this policy, "employment" shall mean hired for compensation. In that every University employee is specifically prohibited from engaging in acts, which constitute sexual harassment or gender discrimination, any such misconduct is outside the scope of employment duties. This Policy extends beyond "employment"; into educational programs and activities, as well as to independent contractors or vendors to the extent the University has any authority or influence over such non-University persons or entities.

### **D. Educational Programs and Activities**

"Educational programs and activities" include all of the University's programs and activities that relate directly to the process of education, teaching, mentoring, coaching, recruiting, or other programs and activities directly related to the education of students, development of athletes, performance of research, or extension of library resources.

### **E. Gender Discrimination**

It is the policy of the University to prohibit discrimination based on gender. Except as permitted by law, no person shall, on the basis of gender, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity operated by the University. Specifically, in providing any aid, benefit, or service to a student, the University shall not, on the basis of gender:

- (1) treat one person differently from another in determining the provision of such aid, benefit, or service;
- (2) deny any person any such aid, benefit, or service;
- (3) subject any person to separate or different rules of behavior, sanctions, or other treatment;
- (4) otherwise limit any person in the enjoyment of any right, privilege, advantage, or opportunity provided by the University.

### **F. Consensual Relationships**

Any romantic or sexual relationship between individuals where one party possesses direct academic, administrative, supervisory, evaluative, counseling, or extracurricular authority over the other party presents ethical and administrative problems. Inherent in these types of consensual relationships exist the potential for conflicts of interest, exploitation,

favoritism, harassment, and bias. Furthermore, such relationships may undermine the real or perceived integrity and trust necessary for a beneficial academic or employment environment. Faculty or staff members shall not have romantic or sexual relationships with individuals who they currently have the responsibility for the evaluating, directly supervising, or teaching. The purpose of this policy is to protect students, employees, the University, and the integrity of the system.

Violations of this prohibition will lead to disciplinary action, up to and possibly including termination from the University.

### **III. RIGHTS OF THE PARTIES**

#### **A. Rights of the Complaining Party**

Any member of the University Community who believes that he or she has been subjected to sexual harassment or gender discrimination in violation of this Policy is urged to promptly pursue the matter and to file a complaint in accordance with the procedures described in this Policy. Any employee who reprimands, retaliates against, or discriminates against in person in any way for initiating an inquiry or complaint in good faith shall be subject to disciplinary action up to and including separation from the University.

#### **B. Declination to Defend or Indemnify**

The University will not defend or indemnify any member of the University Community in any legal proceeding or other similar action alleging sexual harassment if the Office of General Counsel (OGC) determines that such member violated this Policy and may have acted either (1) in bad faith, or (2) in a manner adverse to the best interest of the University. If defense is provided and a court later determines that misconduct in fact occurred, the University or the State of Mississippi may seek reimbursement for the cost of any defense provided.

#### **C. Rights of the Alleged Subject/Respondent**

A person against whom a complaint is lodged shall be presumed innocent of that charge unless and until there is a final administrative finding of culpability or a stipulated admission to the charge by that person. Such presumption does not limit the University's ability to take interim action during the scope of an investigation, nor does it limit the University's ability to take employment actions which would be lawful in the absence of such presumption.

### **IV. PROCEDURES FOR RESOLVING SEXUAL HARASSMENT AND GENDER DISCRIMINATION COMPLAINTS**

#### **A. Persons to Contact**

All complaints of sexual harassment or gender discrimination must be submitted to the University's Director of Human Resources ("Director of HR"). For resolution in accordance with these procedures, within 5 business days of receipt of complaints of sexual harassment, the HR Director shall submit to: (1) the Provost all complaints whereby the alleged offender(s) holds academic rank; (2) the Vice President for Business

and Finance all complaints allegedly committed by an agent(s) or employee(s) of vendors, independent contractors, or others who do business with the University, or by any other non-employee; (3) the Associate Vice President for the Division of Student Life should review all complaints allegedly committed by a student of the University. For resolution in accordance with these procedures, the HR Director shall retain all allegations of sexual harassment against alleged offenders who are employees.

Student complaints of sexual harassment or gender-based discrimination by students in educational programs or activities should be brought to the attention of the Associate Vice President for the Division of Student Life. Students are encouraged to consult with the Office of General Counsel if they have any questions regarding this Policy.

Designees may be appointed for varying terms by the Director of Human Resources, Provost, the Associate Vice President for the Division of Student Life, or the Vice President for Business and Finance after consultation with the appropriate Vice President responsible for the supervision of the unit that employs the Designee.

Employees are encouraged to consult with the Director of HR if they have any questions regarding this Policy, including but not limited to, the appropriateness of filing a complaint. If an employee, so elects, the Director of HR, as appropriate, may attempt to resolve the issues prior to the filing of a complaint by the employee.

If a Vice President, Provost, the Chief of Staff, or General Counsel is the subject of a complaint, the complaint shall be filed with the President. With respect to such complaints, the President or his authorized Designee shall determine the most appropriate manner to investigate and resolve the complaint consistent with the remaining provisions of this Policy.

#### **B. Required Information**

A complaint must be in writing and include the name(s), date(s), time(s), description of specific incident(s), and any other information on which the complaint is based. The complainant must sign the complaint and if determined necessary by the University in order to resolve the complaint be willing to be identified to witnesses and to the person against whom the complaint is directed.

#### **C. Time of Filing**

A complaint must be filed within 30 calendar days following the date of the alleged misconduct. If, however, an individual reasonably believes that he or she may be the subject of an adverse personnel action in violation of this Policy, a timely complaint must be filed within 30 calendar days after the employee received actual knowledge that the adverse action would be taken, or within 30 days after the effective date of such adverse action, whichever is earlier. For the purposes of this paragraph, the term "adverse action" shall include the failure to hire, firing, the failure to promote, demotion, and all forms of disciplinary action.

#### **D. Interim Remedial Action**

Promptly upon notification of a complaint, the Director of HR or the assigned Designee will discuss with the complainant the nature of the complaint and will determine whether

interim remedial measures should be taken to alleviate problems or conflicts pending an investigation and resolution. Such measures may involve either the complainant or the accused (the "subject") and may include a transfer, reassignment of duties or reporting requirements, mandatory administrative leave with pay, or other appropriate measures. Such measures shall not be considered disciplinary action against any person and may only be taken with the concurrence of the Chief of Staff and HR Director after consultation with the OGC. Additionally, transfers made pursuant to these policies and procedures are not subject to the University's Transfer Policy.

Promptly upon the filing of a complaint by a student, the Dean shall notify the Associate Vice President of Student Life ("AVPSL"), and shall discuss the complaint with the complainant. Promptly thereafter, the Dean and AVPSL shall consult with the VPAA. If the alleged offender is a University employee, the Provost shall promptly confer with the Chief of Staff, HR Director, and OGC to determine whether interim remedial measures should be taken to alleviate problems or conflicts pending an investigation and resolution. Such measures may involve either the complainant or the subject and may include class reassignments, a transfer from teaching to administrative, research, or other non-teaching duties, administrative leave (with pay), or excusable absences from class and/or class assignments. Such measures, however, shall not be considered disciplinary action against any person and may only be taken with the concurrence of the Provost, after consultation with the OGC.

#### **E. Investigation**

The Director of HR will conduct and manage the investigations of all sexual harassment and gender discrimination complaints regarding non-academic employee-related issues. The Provost will conduct investigations of all sexual harassment or discrimination complaints involving employees of academic rank. The Associate Vice President for the Division of Student Life will conduct investigations into complaints where misconduct was alleged to have been attributable to a student. Alleged misconduct of persons who are neither employees nor students will be investigated by the EVP.

At the election of the Director of HR, the Provost, the Associate Vice President for the Division of Student Life, or the Vice President for Business and Finance, as appropriate, the investigation may be delegated to an appropriate Designee. No Designee, however, shall be permitted to investigate any matter or consult with any potential complainant without first receiving training of a type and duration specified by the Director of HR. Such training shall be completed within 60 days after the selection of the Designee.

With the concurrence of the General Counsel, an investigation may be delegated to an outside law firm or consultant. If a consultant or law firm is used to conduct an investigation, it will be selected by the Director of HR, Vice President, or Provost, as appropriate, and its Report of Investigation may be disclosed only to the extent authorized by the Director of HR, Vice President, or Provost, as appropriate, as well as the Chief of Staff and General Counsel.

#### **F. Methods of Investigation**

The conduct of investigations must include an interview of the complainant and alleged offender and may include one or more of the following fact-finding methods:

- (1) review of all relevant documents, including but not limited to, employment applications, performance reviews, and records of any past disciplinary action;
- (2) interviews of co-workers, supervisors, and any other person who may have knowledge or information relevant to the allegations in the complaint; and
- (3) letters of inquiry by the investigator to those persons described in (2) above.

#### **G. Notice to Subject**

Within ten (10) business days of receipt of the written complaint, the subject of the investigation must be informed in writing by the appropriate authority of the charges contained in the complaint and shall have the right to, within a reasonable period of time, submit a written response to those charges. The written response shall be submitted as follows: (1) for those with non-academic rank to the HR Director; (2) for those with academic rank to the Provost; (3) for students to the Associate Vice President for the Division of Student Life; and (4) for those who are agent(s) or employee(s) of vendors, independent contractors, or others who do business with the University the written response shall be submitted to the Vice President.

#### **H. Confidentiality**

To the fullest extent practicable and consistent with the University's need to investigate and take corrective action, complaints of sexual harassment will be processed confidentially. However, the name of the complainant may be revealed, as well as all alleged material circumstances, if the University determines that such action is necessary to resolve the complaint.

#### **I. Resolution**

Upon the conclusion of an investigation involving employees, a Report of Investigation shall be prepared and forwarded by the person responsible for the Investigation to the appropriate Vice President or other appropriate authority ("decisional authority") with supervisory responsibility over the organizational unit where the subject is employed or where the subject participates in a University activity, unless the person who prepared the Report is the same as the person with decisional authority. The Report shall contain a brief description of the complaint, a statement of the methodology used to investigate the complaint, findings of material fact, and an opinion of the investigator as to whether the allegations of the complaint are sustained by the facts. For allegations against staff employees, the decisional authority, after consultation with the HR Director, Chief of Staff, and OGC, shall meet with the complainant and the subject of the investigation (either separately or together) to implement remedial measures as may be appropriate under the circumstances. If the remedial measures recommended by the University are satisfactory to both parties, the matter is considered resolved. If not, either party may elect to submit the matter to the Sexual Harassment and Gender Discrimination Grievance Committee ("Committee"). The request for a grievance hearing shall be made within 30 calendar days of notice to the parties of the University's proposed remedial measures or notice that remedial measures were not proposed.

## **J. Notification**

In the event that allegations of sexual harassment or gender discrimination are proven to probably have occurred, the decisional authority responsible for reviewing the Report on Investigation shall: (a) notify the subject of investigation of the findings and of the remedial action taken or to be taken; and (b) notify the complaining party that the allegations have been sustained and that appropriate remedial action has been or will be taken. The complainant shall be informed of the nature of such action only in the event that the remedial action may affect the terms and conditions of the complainant's employment.

In the event that the allegations are not believed to be sexual harassment or gender discrimination, the decisional authority will so notify the complainant and the subject.

## **K. Possible Sanctions**

Possible sanctions for a person found guilty of behavior in violation of this policy include but are not limited to the following:

- (1) oral or written warning and reprimand placed in personnel file;
- (2) required attendance at a sensitivity program;
- (3) loss of salary or benefit, such as sabbatical, travel funding transfer, change of job, class or residential assignment or location (i.e., removing the person from being in a position to retaliate or further harass the victim), fine, demotion, suspension, probation, termination, or expulsion.
- (4) If students or student groups are guilty of sexual harassment any of the sanctions set forth in the University Judicial Code may also be invoked.
- (5) For vendors, independent contractors, and other non-employee/non-student persons or entities, the University may take any action which is not contrary to Mississippi law.

## **L. Alternative Procedures**

If a Vice President (or person of similar rank) is the subject of a complaint, the President shall be the official to whom the Report of Investigation shall be furnished and who shall take such remedial action as may be appropriate. If the President, in his individual capacity, should be the subject of a complaint, the Director of HR shall notify the Commissioner and the Chairman of the Legal Committee of the Board of Trustees of the Mississippi Institutions of Higher Learning. Thereafter, and such complaint shall be investigated as directed by such Committee.

## V. GRIEVANCE HEARING PROCEDURES

### A. Request For and Scheduling of Hearing.

After the procedures set out in the preceding sections have been completed, and if those steps have not led to a mutually satisfactory settlement of the problem, either the complainant or the subject may make a written request for a hearing to the person identified above in Section IV, subpart “A,” (“Persons to Contact”). The person requesting a hearing must agree to disclose any relevant documents to the Committee. The hearing will be conducted within 60 working days from the date that the written request for hearing was actually received by the appropriate person or agent thereof, and a Committee will be established to conduct an administrative hearing. The notice of hearing will be mailed or hand delivered to both the complainant and the subject no later than five working days before the hearing (although more notice is recommended) and shall include the date, time, and location of the hearing.

### B. Selection of the Committee.

If the subject of the grievance is a student, the Associate Vice President for the Division of Student Life may select a Committee, if any, and determine the need for a hearing or other procedure in a manner consistent with the Student Handbook. The following paragraph applies where the subject is not a student.

The Committee will be composed of either three or five individuals selected randomly from a pool of persons, which shall be called the Sexual Harassment and Gender Discrimination Committee Pool (“Pool”). The pool will include both faculty and staff in equal proportion.

The faculty individuals will be those individuals currently selected by the procedures set forth under the Faculty Grievance Procedure, or, if no group is formed at the time of the request for a hearing under this Policy, the procedures for selecting faculty for the Faculty Grievance Procedure will be used to identify those faculty members to be included in the Pool. An equal number of staff employees will be selected and placed into the Pool along with the faculty members. From the Pool, three or five persons will be selected randomly to form the Committee, which shall include at least one faculty member and one staff member. If a selected individual has a conflict and is unable to participate, another member will be drawn from the Pool. Selected individuals should notify the appropriate individual (the person identified in Section IV, subpart “A”) as soon as they are aware of their availability or unavailability. The persons selected for the Pool must notify their supervisor of their participation, and receive a commitment from such individual that they will be available to participate. Supervisory personnel should not discourage participation unless a hardship would result or an apparent conflict of interest exists. If a member of the pool is drawn who has already served on a Committee in a grievance during the preceding 6 months, that person may ask for an alternate name to be drawn as a replacement. If no replacement is available, and a conflict of interest does not exist, such selected person must serve on the Committee.

### C. The Hearing.

The Committee must ensure the following:

- (1) The complainant and the alleged offender understand that they may bring an advisor of their choice to the hearing. The University has no obligation to incur any expense in connection with an advisor's participation. This advisor may be an attorney, a faculty member, another staff member, a relative, or a citizen-at-large. If the parties wish to have legal counsel present at the hearings, they must also inform the chairperson of the Committee at least three days prior to the hearing. The advisor may address the Committee only with the consent of the chairperson.
- (2) The complainant and respondent must submit all documentary evidence to the Committee Chair at least three business days prior to the hearing. Documentary evidence provided will be available for review upon scheduled appointment by Committee members as well as the complainant and alleged offender prior to the hearing, but such documents will not be allowed to leave University premises.
- (3) The complainant and the respondent are responsible for ensuring that any witnesses that they wish to provide information are available and present at the hearing to do so. The Committee has within its discretion to call witnesses or request documents at any time, but does not have authority to compel attendance (or a subpoena power).
- (4) The hearing is closed because of the sensitive nature of the information involved. A representative of the division identified in Section IV, subpart A of this Policy, a representative of the OGC, and an individual responsible for recording the hearing may be present. The necessity of a recording, and the type of recording, will be made by the decisional authority with consultation of the OGC on a case-by-case basis.
- (5) A majority vote carries, and negative votes will have the opportunity (but not requirement) to prepare a minority report for the records.
- (6) Retaliation against the person seeking relief, the complainant, or any advisor is prohibited and subject to disciplinary action.
- (7) Both parties will have equivalent opportunities to present their information.
- (8) Only one witness appears before the Committee at a time. The complainant and subject may be present during the witnesses' testimony.
- (9) Every witness is instructed not to discuss the hearing.
- (10) Only evidence germane to the allegations may be presented at the hearing. With consultation from the OGC, the chairperson of the Committee makes decisions of admissibility of documents and testimony subject matter.

- (11) Fairness and consistency are exercised in recommending corrective action.
- (12) Hearings are to take place on regular work days during working hours.
- (13) The Committee shall state its findings and recommendations in writing to the appropriate person as identified in Section IV, Subpart “A of this Policy,” within 10 calendar days of the close of the hearing.
- (14) The HR Director or Provost may implement additional hearing procedures in furtherance of this Policy.
- (15) The OGC shall interpret and make recommendations regarding such procedures, which shall not be inconsistent with this Policy.

#### **D. Record Retention.**

Due to the sensitivity of the information involved, any documents pertaining to the employee’s and/or students’ allegations will be transferred to and maintained in confidential files under the supervision of the Director of Human Resources (for nonacademic employees), the Provost (for academic rank employees), the Associate Vice President for the Division of Student Life (for students), or the Vice President (for non-employees). These confidential files are disclosed only to necessary University officials who have been so designated by at least one top-level administrator, such as an area vice president, Director, the General Counsel, or the President. A record showing the use of the files will be maintained, and sexual harassment incidents involving students are incorporated into a confidential file in the Office of the Vice President for Student Affairs. The file may be destroyed after two years from the student’s departure from the University.

### **VI. APPEAL PROCESS**

Appeals must be submitted to the President within 10 days of receipt of the written decision of the Committee. The Appeal must be in writing and must clearly state the basis upon which the appeal is requested. The appeal decision should be made within 15 days of submission to the Office of the President.

### **VII. CONFLICTS OF INTEREST**

If the performance of any duty or responsibility hereunder by University employees presents any actual or apparent conflict of interest or violation of the University’s Code of Ethics and Conduct, as determined by the General Counsel, the General Counsel may recommend to the President reassignment of duties and/or responsibilities of such employees on a case-by-case basis to avoid such conflict or violation. Any person who believes they cannot be impartial, or viewed as impartial, due to a conflict of interest has an obligation to inform others of such conflict and to remove or recuse him or herself from the investigative/administrative hearing process.

### **VIII. EFFECT ON FORMER POLICIES AND PROCEDURES**

This Policy against Sexual Harassment and Gender-based Discrimination supersedes and replaces, in their entirety, all previous University policies and procedures dealing with Sexual Harassment and Gender Discrimination. The JSU Equal Employment Opportunity Policy shall remain effective, although complaints of sexual harassment and gender discrimination are to be governed by this policy.

## **X. ELECTION AND WAIVER**

Once an individual has elected to pursue a complaint in one of the University's grievance procedures, the Grievant waives any right to rehearing those specific issues in any future University grievance process. Similarly, a Grievant cannot re-submit an issue in a Grievance where that specific issue has previously been addressed in a court of law or other government body whose authority the University is subjected. If the Complaint includes issues already resolved or adjudicated, those issues will not be revisited in another grievance or hearing. If the matter is pending in a court of law or government investigative agency, the University may stay the hearing process in this policy, but such stay will not affect the University's own full investigation into any allegations.

**For Information and/or Materials on Sexual Harassment, contact either of the following offices via the JSU Website: [www.jsums.edu](http://www.jsums.edu)**

### **Office of Human Resources**

Jackson State University  
Post Office Box 17028  
Jackson MS 39217  
Telephone: (601) 979-2015

### **Office of the Provost/CAO**

Jackson State University  
Post Office Box 17199  
Jackson MS 39217  
Telephone: (601) 979-2244

### **Office of the Associate Vice President for Student Life**

Jackson State University  
Post Office Box 17350  
Jackson MS 39217  
Telephone: (601) 979-2241