SEXYAL HARASSMENT, SEXUAL VIOLENCE, AND SEXUAL MISCONDUCT POLICY

INTRODUCTION

Mercer University is committed to maintaining an environment free from discrimination on the basis of sex where the dignity and worth of all members, guests and visitors of the University community are respected. Sexual harassment, sexual violence and sexual misconduct harms the environment the University seeks to maintain and are unequivocally prohibited. This policy has been developed in accordance with Title IX of the Education Amendments of 1972 to reaffirm these principles and to provide a grievance procedure for students and employees with complaints regarding sexual harassment, sexual violence and sexual misconduct as defined below. Employee complaints regarding other forms of sex discrimination will be handled in accordance with the grievance procedures outlined in the faculty and staff handbooks (Faculty Handbook Section 2.10 and Non Faculty Handbook Section 5/Grievance Procedures).

All members of the University community are expected to conduct themselves in a manner that does not infringe the rights of others, whether on University premises or at any off campus location. This same responsibility extends to employees of third parties doing business with the University or on University premises and to campus visitors. University administrators and supervisors have the responsibility of preventing and implementing steps designed to eliminate sexual harassment, sexual violence and sexual misconduct within the areas they oversee. If University administrators, faculty, or staff know sexual harassment, sexual violence and/or sexual misconduct is occurring, receive a complaint of sexual harassment, sexual violence and/or sexual misconduct, or obtain other information indicating possible sexual harassment, sexual violence and/or sexual misconduct, they must take immediate steps to ensure the problem is addressed, even if the problem or alleged problem is not within their area of oversight, by reporting the behavior of concern to the appropriate authority charged with investigating such complaints.

Under Title IX, individuals reporting as allegation related to sexual harassment, sexual violence and/or sexual misconduct have the right to prompt resolution of their complaint, to have the University conduct a prompt, thorough and impartial investigation, and to have interim steps taken to ensure the safety and wellbeing of the individuals involved and the University community. The University will communicate regular investigatory updates to the complainant and the respondent. When an allegation of sexual harassment, sexual violence and/or sexual misconduct is brought to the University’s attention, and if a respondent is found to have violated this policy, serious sanctions will be used to prevent its reoccurrence and address its effects. Mercer University does not tolerate or condone retaliation, will take steps to prevent retaliation, and will evaluate responsive actions, as necessary, for any retaliatory acts.

Individuals reporting sexual harassment, sexual violence and/or sexual misconduct and/or making inquiries concerning the application of Title IX at Mercer University may contact:

Rhonda Lidstone
Associate Vice President for Human Resources/Title IX Officer
Human Resources Building
1400 Coleman Ave., Macon, GA 31207
478-301-2005
Lidstone_rw@mercer.edu

Individuals may also file a report with the Office of Civil Rights:

Headquarters:  Regional Office:
Office for Civil Rights  Office for Civil Rights
U.S. Department of Health and Human Services  U.S. Department of Health and Human Services
200 Independence Avenue, S. W.  Sam Nunn Atlanta Federal Center, Suite16T70
Room 509F  HHH Bldg.
Washington, D.C. 20201  61 Forsyth Street, S.W.

(800) 368-1019

Revised 10-7-2013
Violations of this policy include, but are not limited to the following offenses, or attempts to commit them, as defined in more detail below.

1. **Sexual Harassment is:**
   Unwelcome sexual advances, requests for sexual favors and other gender-based verbal, non-verbal or physical conduct of a sexual nature when:
   - Submission to such conduct is made either explicitly or implicitly a term or condition of an individual’s employment or status in a course, program or activity; or submission to or rejection of such conduct is used as a basis for an academic, employment or placement decision affecting the individual; or
   - Such conduct is objectively offensive and sufficiently severe, persistent, or pervasive that it has the effect of unreasonably interfering with an individual’s work performance or educational experience, creates an intimidating, hostile environment, or involves retaliation.

   Examples include: an attempt to coerce an unwilling person into a sexual relationship; to repeatedly subject a person to unwelcome sexual attention; to punish a refusal to comply with a sexual based request; to condition a benefit on submitting to sexual advances; gender-based stalking; or gender-based bullying. Sexual harassment can occur regardless of the relationship, position or respective sex of the parties. Same sex harassment violates this policy, as does harassment by a student of a faculty member or a subordinate employee of his/her supervisor.

2. **Sexual Violence**
   a. **Non-Consensual Sexual Contact is:**
      Any intentional sexual touching
      - however slight,
      - of any part of one person's body with any part of another person's body or an object,
      - by a man or a woman upon a man or a woman,
      - that is without consent and/or by force.

      Examples include, but are not limited to: intentional contact with the breasts, buttocks, groin, or genitals, or touching another with any of these body parts, or making one person touch another person or themselves with or on any of these body parts; or any intentional bodily contact in a sexual manner.

   b. **Non-Consensual Sexual Intercourse is:**
      Any sexual intercourse
      - however slight,
      - with any part of a person’s body or an object,
      - by a man or woman upon a man or woman,
      - that is without consent and/or by force.

      Intercourse includes, but is not limited to: vaginal penetration by a penis, object, tongue or finger; anal penetration by a penis, object, tongue or finger; or oral copulation (mouth to genital contact or genital to mouth contact), no matter how slight the penetration or contact.

3. **Sexual Exploitation is:**
   When a faculty, staff, or student takes non-consensual or sexual advantage of another for his/her own advantage or benefit, or to benefit or advantage another (other than the one being exploited), and that behavior does not otherwise constitute one of the other sexual harassment, sexual violence and sexual misconduct offenses.

   Examples include, but are not limited to: invasion of sexual privacy; prostituting another individual; non-consensual observation, either by direct observation or video or audio-taping of sexual activity; engaging in voyeurism; knowingly transmitting an STI (Sexually Transmitted Infection) or HIV (Human Immunodeficiency Virus) to another; exposing one’s genitals in non-consensual circumstances; or inducing another to expose his or her genitals.
Additional Applicable definitions:

- **Consent**: Consent is clear, knowing and voluntary. Consent is active, not passive. Silence, in and of itself, cannot be interpreted as consent. Consent can be given by words or actions, as long as those words or actions create mutually understandable clear permission regarding willingness to engage in (and the conditions of) sexual activity.
  
  - Consent to any one form of sexual activity cannot automatically imply consent to any other forms of sexual activity.
  - Current and/or previous relationships or prior consent cannot imply consent to future sexual acts.
  - In order to give effective consent, one must be of legal age, which is 16 years. Sexual activity with someone known to be – or based on the circumstances should reasonably have known to be – mentally or physically incapacitated (by alcohol or other drug use, unconsciousness or blackout) constitutes a violation of this policy.
    - Incapacitation is a state where someone cannot make rational, reasonable decisions because they lack the capacity to give knowing consent (e.g., to understand the “who, what, when, why or how” of their sexual interaction).
    - This policy also covers a person whose incapacity results from mental disability, sleep, involuntary physical restraint, or from the taking of alcohol or drugs.
  
- **Force**: Force is the use of physical violence and/or imposing on someone physically to gain sexual access. Force also includes threats, intimidation (implied threats) and coercion that overcome resistance or produce consent.
  
  - Coercion is unreasonable pressure for sexual activity. Coercive behavior differs from seductive behavior based on the type of pressure someone uses to get consent from another. When someone makes clear that they do not want sex, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.
  
  - NOTE: There is no requirement that a party resists the sexual advance or request, but resistance is a clear demonstration of non-consent. The presence of force is not demonstrated by the absence of resistance. Sexual activity that is forced is by definition non-consensual, but non-consensual sexual activity is not by definition forced.

**SEXUAL HARASSMENT, SEXUAL VIOLENCE, AND SEXUAL MISCONDUCT REPORTING AND GRIEVANCE PROCEDURES**

If an individual believes he or she has experienced sexual harassment, violence and/or misconduct of any sort, it is particularly important, for the protection of both the complainant and the University community, that the incident be reported immediately.

For cases involving non-consensual sexual contact or non-consensual sexual intercourse, it is particularly important for a complainant to report it immediately to the Mercer Police Department or local police as soon as possible. Mercer Police can assist the individual in getting medical attention and in notifying the proper local law enforcement authorities, if the complainant so chooses. The sooner an assault is reported, the easier it is to preserve and collect the evidence necessary for a criminal prosecution. Reporting the incident to the police does not mean the complainant must press charges against the assailant, but it does help assure that the individual receives assistance in deciding how to proceed.

In addition to Mercer Police, some existing services for victims of sexual assault, both on campus and in the local community, include:

Counseling and Psychological Services, Macon (478) 301-2862
Counseling Services, Atlanta (678) 547-6060

Revised 10-7-2013
Where appropriate and possible, the University will take steps to minimize contact and/or potential retribution from a respondent (or any associated group related to the case) to individuals making a complaint of alleged sexual harassment, sexual violence, or sexual misconduct. These actions will be assessed and coordinated by the Student Affairs or Human Resources professional in consultation with the Title IX Officer (See “Preliminary Review” below).

Complaints may be reported to any of the following:

**Atlanta:**
- Residence Life Staff at (678) 547-6823
- Dean of Students at (678) 547-6821
- Associate Vice President for Human Resources/Title IX Officer at (478) 301-2005
- Mercer Police at (678) 547-6358

**Macon:**
- Residence Life Staff at (478) 301-2687
- Vice President and Dean of Students (478) 301-2685
- Associate Vice President for Human Resources/Title IX Officer at (478) 301-2005
- Law School Dean of Students (478) 301-2602
- Medical School Dean of Students (478) 301-5570
- Mercer Police at (478) 301-2970

**Savannah:**
- Dean, Savannah Campus (912) 350-1750
- Office of Faculty Affairs, Savannah Campus (912) 350-1750
- Associate Dean for Student Affairs, Savannah Campus (912) 350-1750
- Associate Vice President for Human Resources/Title IX Officer at (478) 301-2005
- Chatham County Police Department (912) 652-6500

**Columbus:**
- Associate Vice President for Human Resources/Title IX Officer at (478) 301-2005
- Local Columbus Police Department (706) 653-3400

**Centers:**
- Center Coordinator for that location
- Director of Operations for the Centers at (678) 547-6370
- Associate Vice President for Human Resources/Title IX Officer at (478) 301-2005
- Henry, Douglas, and Newnan students call Atlanta Mercer Police at (678) 547-6358
- Eastman Local Police (478) 974-7788
INVESTIGATIVE PROCEDURES

STEP 1: REPORT IS MADE

Once an individual “complainant” reports an alleged incident of sexual harassment, sexual violence and/or sexual misconduct to any official University employee (see reporting procedures), that University employee must immediately notify his or her supervisor, and/or contact the Associate VP for Human Resources if the suspected accused individual (respondent) is an employee, or the Dean of Students (or the Student Affairs designee for their campus) if the suspected accused individual (respondent) is a student. The Dean of Students (or the Student Affairs designee for his or her campus) or the Associate Vice President for Human Resources (AVP-HR) will then notify the Title IX Officer of the complaint.

The complainant will be encouraged to seek out immediate medical care, offered counseling support, and provided the opportunity to file an official report with either campus or local police. After meeting with police, or if the complainant declines to meet with the police, a meeting with the AVP-HR or the Dean of Students (or designee) will be scheduled as soon as possible.

STEP 2: PRELIMINARY REVIEW – INTERIM STEPS

A Student Affairs or Human Resources representative professional will meet with the complainant to review the investigative and adjudication procedures related to the allegation and to review and evaluate interim steps that may be taken to protect the complainant and the community. These steps may include modification to class schedules, work assignments, living arrangements, and/or limits on contact with the respondent depending on the circumstances. These modifications will be made with due deference to provide balance and equity for both the complainant and the respondent(s) in the process. Complainant is advised of his or her rights under Title IX at this point.

The Student Affairs or Human Resources professional will interview the complainant and conduct a preliminary investigation, using police reports where available, to ascertain if there is reasonable cause to believe this policy has been violated.

Based on feedback from the complainant, any known and relevant history or patterns related to the case, and the severity of the allegation, the Dean of Students (or designee)/AVP-HR in consultation with the Title IX Officer will determine whether to move forward with a full investigation or to end the process at this stage.

If the decision is made not to proceed further, the institution will make every effort to obtain written verification from the complainant that he or she was made aware of their rights under Title IX. A copy of this report must be sent to the Title IX Officer.

If the decision is made to proceed with a full investigation, the Title IX officer, in consultation with appropriate administrators/Mercer Police, will assign a trained investigator to the case.

STEP 3: FULL INVESTIGATION

The trained investigator and/or a Mercer Police Officer will notify both parties of the investigation and will conduct a full review of the allegations including all available relevant witnesses and evidence presented by both the complainant and the respondent. The investigator and/or Mercer Police will write up their findings including an assessment of what they believe to have occurred based on the preponderance of evidence standard (i.e., it is more likely than not that sexual harassment, violence, or misconduct occurred). These findings should include feedback from both the complainant and respondent regarding his or her preference for resolution of the allegations. These findings are to be presented in a written report to the Dean of Students for student cases and the Associate VP for Human Resources for cases involving employees. Typical investigations will be completed within 60-90 days but may vary depending on the complexity of the investigation and the severity and extent of the harassment. A copy of these findings should be sent to the Title IX Officer.

Revised 10-7-2013
STEP 4: RESPONSE TO INVESTIGATION

Based on findings from the investigation and feedback from the complainant and respondent, the Dean of Students in consultation with the Title IX Coordinator for student cases, and the AVP for Human Resources for employee cases makes a determination on resolution of the allegations. This resolution will be one of the following:

1) No Further Action
   Based on the information obtained during the investigation, and feedback from the complainant and respondent, the University may choose to take no further action. If no action is taken, a copy of the investigation and supporting documentation supporting this decision will be sent to the Title IX Officer.

2) Informal Resolution
   Based on feedback from both the complainant and respondent, the University may provide an opportunity for informal resolution. Informal resolution will be handled by the Dean of Students (or designee) for student cases and by the AVP-HR for employee cases. Informal resolution does not involve a hearing, but represents resolution for the case that may include stipulations on contact, educational activities, or other actions as determined by the Dean of Students/AVP-HR. If either party does not agree with the outcome and/or stipulations during the informal resolution process, the case may be referred to formal action for review (see below). Any informal resolution must be reviewed by the Title IX Officer before becoming binding.

3) Formal Resolution
   When a case is not resolved voluntarily through informal resolution, a review of the allegations is conducted by the appropriate disciplinary process applicable to the respondent(s) (student or employee).

   For student respondents:
   The case is forwarded for charges and processing (hearing) under the appropriate Student Code of Conduct procedures applicable to the respondent(s) involved.

   For employees:
   Within 30 days of receipt of the report of the full investigation, the AVP-HR will implement appropriate disciplinary action for the employee. If dismissal of a faculty member is recommended by the AVP-HR, faculty members may exercise their rights as outlined in section 2.08 of the Faculty Handbook.

In both of these resolution processes, a review of the investigative findings of the investigator and/or Mercer Police may suffice in place of hearing from any or all witnesses, and/or the complainant or respondent. However, in the case of students, both the complainant and respondent should be offered the opportunity to be present during the hearing, to make any statements they wish to make prior to concluding the hearing, and to submit impact statements.

The hearing body/AVP-HR retains the right to request additional information deemed necessary to clarify any questions or issues, and to determine responsibility. The final outcome of this hearing body/AVP-HR will be shared with both the complainant and respondent. A copy will be sent to the Title IX Officer.
STEP 5: APPEAL

Either party may appeal the outcome of the resolution process. If both the complainant and the respondent are students, appeals should be handled in accordance with the Student Conduct Code applicable to the campus/school in which the respondent’s case was processed.

If the respondent is an employee, appeals from either the complainant or respondent should be directed to the Executive Vice President for Finance and Administration within ten (10) working days after the receipt of the written outcome. Any such appeal shall be in writing and shall state the grounds for the appeal. Grounds for appealing the outcome are:

1. An error in procedural due process, which prejudiced the accused to the extent that they were denied a fundamentally fair hearing as a result of the error. Procedural flaws alone are not grounds for an appeal. Significant procedural errors that may have affected the outcome will be considered.
2. The emergence of new evidence that could not have been previously discovered and that, had it been represented at the initial hearing, would have substantially affected the original decision.
3. The imposition of sanctions which are disproportionate to the offense.

For these cases where the respondent is an employee, the Executive Vice President for Finance and Administration shall make a decision within 30 working days of receipt of the appeal. The Executive Vice President’s decision is final.

Both parties will be notified in writing about the outcomes of any appeal. A copy will be sent to the Office of Human Resources for faculty and staff, and to the Title IX Officer.