

26 Discrimination and Harassment Based on Protected Categories Other than Sex

Approved by President

Effective Date: December 1, 2020

Responsible Division: President

Responsible Office: Institutional Equity and Compliance

Responsible Officer: Assistant to the President for Institutional Equity and Compliance

I. Purpose

This policy provides for the orderly resolution of complaints of discrimination or harassment on the basis of race, color, religion, ethnic or national origin, disability, age (as applicable), status as a protected veteran, genetic information, and/or any other legally protected class. Such discrimination and harassment are strictly prohibited by Middle Tennessee State University (MTSU or University).

Complaints related to sexual misconduct, sexual discrimination, and sexual harassment (including claims based on pregnancy, sexual orientation, or gender identity/expression) should be addressed under the procedures set forth in Policies [27 Misconduct, Discrimination, and Harassment Based on Sex \(Including Pregnancy, Sexual Orientation, and Gender Identity/Expression \(/policies/governance-and-compliance/027.php\)](#) and [29 Title IX Compliance \(/policies/governance-and-compliance/029.php\)](#), and this policy shall not apply to such complaints. Fair and prompt consideration shall be given to all complaints in accordance with the procedures set forth below.

II. Scope

A. These procedures shall be utilized by:

1. Any employee or student who has been a victim of discrimination or harassment on the basis of race, color, religion, ethnic or national origin, disability, age (as applicable), status as a protected veteran, genetic information, and/or any other category protected by federal or state civil rights laws that apply to MTSU;
2. Any former employee or student who has been a victim of discrimination or harassment on the basis of race, color, religion, ethnic or national origin, disability, age (as applicable), status as a protected veteran, genetic information, and/or any other category protected by federal or state civil rights laws that apply to MTSU, if the conduct took place during the time of employment or enrollment at MTSU;
3. Any employee or student who has knowledge of discrimination or harassment on the basis of race, color, religion, ethnic or national origin, disability, age (as applicable), status as a protected veteran, genetic information, and/or any other category protected by federal or state civil rights laws that apply to MTSU against another employee or student in order to report such offenses; and,
4. All third parties with whom MTSU has an educational or business relationship who have been a victim of discrimination or harassment on the basis of race, color, religion, ethnic or national origin, disability, age (as applicable), status as a protected veteran, genetic information, and/or any other category protected by federal or state civil rights laws that apply to MTSU, when the conduct has a reasonable connection to the University.

B. This policy is adopted specifically to address the offenses defined herein.

All employees, including faculty members, and students shall be knowledgeable of policies and standards concerning discrimination and harassment. All faculty members, students, and staff are subject to this policy. Any faculty member, student, or staff member found to have violated this policy by engaging in behavior constituting discrimination or harassment will be subject to disciplinary action, which may include dismissal, expulsion, termination, or other appropriate sanction.

In addition, contractors, vendors, and other third parties are also subject to this policy and are expected to comply with the requirements set forth herein. Any contractor, vendor, or other third party, who fails to comply with this policy, is subject to all remedies available under any applicable contract and subject to permanent removal from the MTSU campus or all MTSU controlled properties.

C. This policy applies to all University programs and activities, including, but not limited to, discrimination and harassment in athletics, instruction, grading, University housing, and University employment. This policy applies to alleged violations that occur on University owned, leased, or otherwise controlled property, while participating in international or distance learning programs, and off campus, when the conduct impairs, interferes with, or obstructs any University activity or the mission, processes, and functions of the University. This policy also applies to any off-campus behavior that affects a substantial University interest. A substantial University interest is defined to include:

1. Any situation where a student's conduct may present a danger or threat to the health or safety of others;

2. Any situation that significantly impinges upon the rights, property, or achievements of others;

3. Any situation that is detrimental to the educational mission and/or interests of the University.

D. This policy shall not be construed or applied to restrict academic freedom, nor shall it be construed to restrict constitutionally protected expression, even though such expression may be offensive, unpleasant, or even hateful.

III. Mandatory Reporting and Cooperation

Using the procedures outlined in this policy, faculty and staff must promptly report to the appropriate University contact any complaint or conduct that might constitute discrimination or harassment as defined by this policy, whether the information concerning a complaint is received formally or informally. Failure to do so may result in disciplinary action up to and including termination.

All faculty and staff members are required to cooperate with investigations of alleged discrimination or harassment. Failure to cooperate may result in disciplinary action up to and including termination. Students are also required to cooperate with these investigations and failure to do so may result in disciplinary action up to and including expulsion.

IV. Mandatory Training

Because the courts have imposed strict obligations on employers with regard to discrimination and harassment, MTSU will offer yearly training for employees regarding conduct that could violate this policy. All employees, including faculty members, are expected to participate in this training. Further, all faculty members, students, and staff are responsible for taking reasonable and necessary action to prevent and discourage all types of discrimination and harassment.

V. Definitions

A. Discrimination. Discrimination may occur by:

1. Treating individuals less favorably because of their race, color, religion, ethnic or national origin, disability, age (as applicable), status as a protected veteran, genetic information, or any other category protected by federal or state civil rights law; or
2. Having a policy or practice that has a disproportionately adverse impact on protected class members.

B. Harassment (student-on-student): Pursuant to T.C.A. § 49-7-2406, for purposes of allegations of harassment where both the accused and the accuser are students, harassment is defined as unwelcome conduct directed toward a person on the basis of race, color, religion, ethnic or national origin, disability, age (as applicable), status as a protected veteran, genetic information or any other category protected by federal or state civil rights law that is so severe, pervasive, and objectively offensive that it effectively bars the accuser's access to an educational opportunity or benefit.

C. Harassment. In all other instances involving allegations of harassment not addressed in Section V.B. above, harassment is defined as conduct that is based on a person's race, color, religion, ethnic or national origin, disability, age (as applicable), status as a protected veteran, genetic information, or any other category protected by federal or state civil rights law, that:

1. Adversely affects a term or condition of an individual's employment, education, or participation in MTSU's activities or learning or working environment;
2. Is sufficiently serious (i.e., severe, pervasive, or persistent) and objectively offensive so as to effectively deny or limit a person's ability to participate in, or benefit from, the University's programs, services, opportunities, or activities; or
3. Is used as a basis for, or a factor in, decisions that tangibly affect that individual's employment, education, or participation in MTSU's activities or learning or working environment.

Examples of such conduct include, but are not limited to, verbal or physical conduct relating to an employee's national origin, race, surname, skin color or accent; offensive or derogatory jokes based on a protected category; racial or ethnic slurs; unwelcome comments about a person's religion or religious garments; offensive graffiti, cartoons, or pictures; or offensive remarks about a person's age.

Not every act that might be offensive to an individual or a group will be considered harassment. Whether the alleged conduct constitutes harassment depends upon the record as a whole and the totality of the circumstances, such as the nature of the conduct in the context within which the alleged incident occurs. Harassment does not include verbal expressions or written material that is relevant and appropriately related to course subject matter or curriculum.

VI. Procedures

A. General

1. The following procedures are intended to protect the rights of the aggrieved party (hereinafter, "the complainant") as well as the party against whom a complaint of discrimination or harassment is lodged (hereinafter "the respondent"), as required by state and federal laws. Each complaint must be properly and promptly investigated and, when warranted, appropriate disciplinary action taken against the respondent.
2. The Office of the University Counsel shall always be consulted prior to investigation.
3. In situations that require immediate action because of safety or other concerns, MTSU will take any administrative action that is appropriate, i.e., administrative leave with pay pending the outcome of the investigation. Students may be placed on interim suspension under the appropriate circumstances and in accordance with [Policy 540 Student Conduct \(/policies/student-affairs/540.php\)](/policies/student-affairs/540.php) pending the outcome of the investigation. The Office of the University Counsel shall be contacted before any immediate action is taken.
4. Notices required by this policy will be sent via the student's or employee's official MTSU email account as well as a hard copy letter sent via first class USPS mail to their local address as indicated in the student or employee information system. A notice sent to a student organization will be sent to the organization's president at that student's MTSU email address and his/her local address. Students and employees have the responsibility to regularly check their University-issued email accounts and to ensure that the local address on file with MTSU is current.
5. The Tennessee Human Rights Commission (THRC) will be notified before any Title VI investigation commences, and at the conclusion of all Title VI investigations before reporting and responding parties are notified.

B. Filing Complaints

1. Any current or former student, applicant for employment, current or former employee, contractor, or third party who believes he/she has been subjected to discrimination or harassment covered by this policy or who believes that he/she has knowledge of discrimination or harassment taking place shall present the complaint to one of the offices designated below, which shall conduct the investigation:

Complaints against students:

[Office of Student Conduct \(/student-conduct/index.php\)](/student-conduct/index.php)
208 Keathley University Center
1301 East Main Street
Murfreesboro, TN 37132
(615) 898-2750
[studentconduct@mtsu.edu \(mailto:studentconduct@mtsu.edu\)](mailto:studentconduct@mtsu.edu)

Complaints against faculty, staff, contractors, or third parties:

[Office of Institutional Equity and Compliance \(http://www.mtsu.edu/iec/\)](http://www.mtsu.edu/iec/)
116 Cope Administration Building
1301 East Main Street
Murfreesboro, TN 37132
(615) 898-2185
[iec@mtsu.edu \(mailto:iec@mtsu.edu\)](mailto:iec@mtsu.edu)

If the complaint involves personnel in the indicated office, the complaint may be filed in the other office.

2. Complaints must be brought within three hundred sixty-five (365) days of the last incident of discrimination or harassment except that complaints alleging discrimination based on race, color, or national origin under Title VI (applicable to programs or activities that receive Federal financial assistance) must be brought within one hundred eighty (180) days of the last incident of discrimination. Complaints brought after the relevant time period will not be pursued absent extraordinary circumstances. The determination of whether the complaint was timely or whether extraordinary circumstances exist to extend the complaint period shall be made in conjunction with the Office of the University Counsel.
3. Every attempt will be made to get the complainant to provide the complaint in writing. The complaint shall include the circumstances giving rise to the complaint, the dates of the alleged occurrences, and names of witnesses, if any. The complaint shall be signed by the complainant. However, when the complainant chooses not to provide or sign a written complaint, the matter will still be investigated and appropriate action taken.

In the event that a complainant decides that he/she does not want to pursue the complaint or makes the complaint anonymously, the investigator will, in consultation with the Office of the University Counsel, determine whether to continue to pursue the complaint to the extent that it can, consistent with the complainant's request.

Any such request will be evaluated in the context of MTSU's responsibility to provide a safe and nondiscriminatory environment for all students, faculty, and staff. At all times, the investigator shall pursue necessary measures to remedy the effects of any harassment, prevent retaliation, and protect other members of the educational community to the extent possible.

4. The investigator shall notify the complainant of resources available to him/her, such as counseling, health services, interim protective measures, and his/her right to file a complaint with the appropriate law enforcement agency. The investigator will continuously assess what resources might be beneficial to the complainant and advise the complainant of the availability of those resources throughout the investigation process.

5. If the facts alleged in the complaint do not constitute legally actionable discrimination or harassment, the investigator may dismiss the complaint without further investigation after consultation with the Office of the University Counsel.

C. Investigation

1. MTSU will initiate an investigation of all complaints making allegations of potential violations of this policy. Such investigation will be prompt, thorough, and impartial. Further, even absent a formal complaint, MTSU may investigate any conduct that might be found to violate this policy under the procedures set forth below, if it learns of such conduct in a timely manner.

2. The Office of the University Counsel shall be notified of the complaint, whether written or verbal, as soon as possible after it is brought to the attention of the investigator and the investigation will be under the direction of the Office of the University Counsel. All investigatory notes and other documents created or gathered during the investigatory process shall be attorney work product. The investigator also shall notify the President and any appropriate coordinator (i.e., Title VI, Title IX, or ADA/Section 504) that an investigation is being initiated.

3. When the allegation of discrimination or harassment is against the Assistant to the President for Institutional Equity and Compliance, the Assistant Dean of Student Conduct, the Title VI or Title IX Coordinator (including Deputy Coordinators), Director of ADA Compliance, or Equity Specialist, the President will identify an individual who has been trained in investigating such complaints to investigate the complaint and carry out the responsibilities assigned pursuant to this policy. When the allegation of discrimination or harassment is against the President, the Assistant to the President for Institutional Equity and Compliance shall notify the Board of Trustees which shall engage an entity independent of the University to conduct an investigation and submit its findings to the Board of Trustees.

4. When the respondent is a student, the Office of Student Conduct will investigate the complaint in compliance with the procedures outlined in this policy. If a finding of violation is made, any resulting disciplinary action will be undertaken in compliance with MTSU's student disciplinary rules.

5. When a student is involved as the complainant, the respondent, or a witness, all documentation referring to that student shall be subject to the provisions and protections of the Family Educational Rights and Privacy Act (FERPA) and T.C.A. § 10-7-504(a)(4), which requires that certain student records are not subject to disclosure pursuant to a public records request.

6. In consultation with and under the direction of the Office of the University Counsel, the investigator shall conduct an investigation of the complaint. This investigation shall include interviews with both the complainant and the respondent, unless either declines an in-person interview. The investigation shall also include interviews of relevant witnesses named by the complainant and respondent. The purpose of the investigation is to establish whether there has been a violation of this policy. It is the responsibility of the investigator to weigh the credibility of all individuals interviewed and to determine the weight to be given to information received during the course of the investigation.

7. To the extent possible, the investigation will be conducted in such a manner to protect the confidentiality of both parties. However, the complainant, respondent, and all individuals interviewed shall be informed that MTSU has an obligation to address discrimination or harassment, and that, in order to conduct an effective investigation, complete confidentiality cannot be guaranteed. Information may need to be revealed to the respondent and to potential witnesses. However, information about the complaint should be shared only with those who have a need to know about it.

The complainant may be informed that if he/she wants to speak privately and in confidence about discrimination or harassment, he/she may wish to consult with a licensed social worker, counselor, therapist, or member of the clergy who is permitted, by law, to assure greater confidentiality.

8. Once the investigator determines that an investigation that may lead to disciplinary action against the respondent is necessary, the investigator shall provide written notice to the respondent of the complaint. The respondent may respond in writing to the complaint within five (5) working days following the date of receipt of the investigator's notification.

9. If either the complainant or the respondent is a student, the investigator should communicate the prohibition against disclosure of personally identifiable information with regard to the student, based on FERPA.

10. The complainant, the respondent, and all individuals interviewed shall be notified that any retaliation that occurs in connection with the complaint or its investigation is strictly prohibited, regardless of the outcome of the investigation. Any retaliation should be reported to the investigator immediately. In the event that MTSU learns of any retaliation against anyone involved in an investigation under this policy, it will be investigated pursuant to the procedure set out in this policy, and any individual found to have engaged in any form of retaliation will be subject to discipline.

11. At any time during the course of the investigation, the investigator may meet with both the complainant and the respondent individually for the purpose of resolving the complaint informally. Either party has the right to end informal processes at any time. If informal resolution is successful in resolving the complaint, a report of such, having first been reviewed by the University Counsel, shall be submitted to the appropriate decision maker.

12. The appropriate decision-maker will be determined by the status of the respondent. If the respondent is a student, the matter shall be referred to the Vice President for Student Affairs for a determination. If the respondent is a faculty member, the matter will be referred to the Provost. If the respondent is a staff member, the matter shall be referred to the Assistant Vice President for Human Resource Services. If the respondent is a third party, the matter shall be referred to the Vice President for Business and Finance or designee.

13. If informal resolution is not attempted or is unsuccessful, the investigator shall draft a report summarizing the investigation, which shall be sent to the Office of the University Counsel for review. Each report shall include the allegations made by the complainant, the response of the respondent, corroborating or non-corroborating statements of the witnesses, review of other evidence obtained, conclusions that may be drawn from the evidence gathered, and recommendations about the disposition of the matter, including the appropriate sanction. The investigator may attach relevant evidence gathered during the investigation, as appropriate. Documents protected by the attorney work-product privilege, such as the investigator's personal notes, should not be attached to the investigation report.

After review by the Office of the University Counsel, the report shall be submitted to the decision maker within sixty (60) calendar days following receipt of the complaint, absent cause for extending the investigation timeline. In situations where more time is needed to complete the investigation, for reasons such as difficulty in locating a necessary witness, or complexity of the complaint, additional time may be taken, but only following notice to the Office of the University Counsel and written notice to both the complainant and the respondent.

14. If, after investigation, there is insufficient evidence to corroborate the complaint or, in any situation in which the complainant refuses to cooperate in the investigation, it may be appropriate to discuss the complaint with the respondent, informing him/her that he/she is not being accused of a violation of this policy, but that the conduct alleged, had it been substantiated, could be found to violate this policy. Any investigation and subsequent discussion should be documented, and a report submitted as set forth in this procedure. It should also be noted that conduct that does not constitute legally actionable discrimination or harassment may, nevertheless, provide a basis for disciplinary action against the respondent.

15. The decision maker shall review the investigator's report and shall make a final written determination, within a reasonable time as to whether a violation of this policy occurred and what the appropriate resolution should be.

16. After the decision maker has made this determination, the investigator shall, absent unusual circumstances and after consultation with the Office of the University Counsel, separately notify both the complainant and the respondent of the outcome of the investigation.

The notice provided to the respondent shall include the finding of whether the respondent was found to have violated this policy and any sanctions imposed against him/her. The notification to the complainant shall include notice of whether the respondent was found to have violated this policy and, if so, notice of only those sanctions imposed against the respondent that directly relate to the complainant.

17. If the investigation reveals evidence that a violation of this policy has occurred, the decision maker will take immediate and appropriate corrective action. Such action may include meeting with the respondent and/or the complainant and attempting to resolve the problem by agreement. Appropriate steps must be taken to ensure that the discrimination or harassment will not reoccur.

18. After completion of the investigation and any subsequent disciplinary proceedings, all documentation shall be forwarded to the Office of the University Counsel. However, copies of the President's determination, the investigator's report, the complaint (if it concerns an employee), and documentation of any disciplinary action taken against the respondent should be placed in a file maintained by the investigator. Copies of documentation establishing disciplinary action taken against the respondent, if any, whether an employee or student, shall also be maintained in the respondent's personnel or student record, as appropriate.

19. Some documents may be subject to the Public Records Act and thus open to public inspection. All or part of other documents may be protected under FERPA, the attorney/client or attorney work product privileges, or [Policy 811 Personnel Records \(/policies/personnel/811.php\)](#), and would not be subject to release. If a public records request is received, the Office of the University Counsel shall be consulted prior to the release of any documents.

20. A complaint found to have been intentionally dishonest or maliciously made will subject the complainant to appropriate disciplinary action.

D. Appeal of Decision to the President.

1. If either the complainant or respondent is dissatisfied with the decision maker's determination, that determination may be appealed to the President by notifying the investigator in writing of the decision to appeal within seven (7) business days of the date that the decision maker's determination is sent to the parties' University email addresses.
2. If a written request for appeal is not received within seven business (7) days, the determination of the decision maker is final.
3. The appealing party(ies) must explain why it is believed the factual information was incomplete, the analysis of the facts was incorrect, and/or the appropriate legal standard was not applied, and how this would change the determination in the case.
4. The President will issue a written response to the appeal as promptly as possible. This decision will constitute MTSU's final decision on the complaint. The complainant and respondent shall be simultaneously notified of the President's decision in writing.
5. If a final decision has been made that a policy violation occurred, the appropriate coordinator (ADA, Title VI, etc.) shall determine if any remedies are required to address the campus-wide environment, taking into consideration the impact of an incident of discrimination and/or harassment on the campus as a whole and on specific groups or areas on campus. For example, the coordinator may determine that specific training is needed for a student group whose members have been accused of conduct prohibited by this policy.

VII. Other Applicable Procedures

If the final decision includes disciplinary action, the procedures for implementing the decision shall be determined by the applicable policies relating to discipline.

An aggrieved individual may also have the ability to file complaints with external agencies such as the Equal Employment Opportunity Commission (EEOC) (deadline 300 days), the Tennessee Human Rights Commission (THRC) (deadline 180 days), the Office for Civil Rights (OCR), and the courts. The deadlines for filing with external agencies or courts may be shorter than the deadline established for filing a complaint under this policy.

Forms: none.

Revisions: June 5, 2017 (original policy); January 18, 2018; December 1, 2020.

Last Reviewed: November 2020.

References: Title VI; Policies 27 Misconduct, Discrimination, and Harassment Based on Sex (Including Pregnancy, Sexual Orientation, and Gender Identity/Expression); 29 Title IX Compliance; 540 Student Conduct; 811 Personnel Records; T.C.A. §§ 10-7-504(a)(4); 49-7-2406; Public Records Act.