

# 27 Misconduct, Discrimination, and Harassment Based on Sex Including Pregnancy, Sexual Orientation, and Gender Identity/Expression

Approved by President

Effective Date: September 15, 2020

Responsible Division: President

Responsible Offices: Institutional Equity and Compliance

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

## I. Purpose

Sexual misconduct and harassment are forms of sexual discrimination prohibited by state and federal law and MTSU. MTSU is committed to eliminating any and all acts of sexual misconduct, discrimination, and harassment. An environment free from such acts is necessary to a healthy learning, working, and living atmosphere because such misconduct, discrimination, and harassment undermine human dignity and the positive connection among all people at this University. Any allegation of sexual misconduct, discrimination, or harassment not covered by [Policy 29 Title IX Compliance \(/policies/governance-and-compliance/029.php\)](#), will be reviewed according to this policy. MTSU will take appropriate steps, as needed, to prevent the recurrence of sexual misconduct, discrimination, or harassment and to remedy any discriminatory effects.

## II. Scope

A. Except as stated in Section II. C. below, this policy is adopted specifically to address the offenses defined herein, and the procedures set forth in this policy may be utilized by:

1. Any employee or student, including applicants for employment or admission as a student, who has been a victim of sexual misconduct, discrimination, and/or harassment, regardless of sexual orientation or gender identity/expression;
2. Any former employee or student who has been a victim of sexual misconduct, discrimination, and/or harassment, if the conduct took place during the time of employment or enrollment at MTSU, and the conduct has a reasonable connection to the institution;
3. Any employee or student who has knowledge of an act of sexual misconduct, discrimination, and/or harassment against another employee or student in order to report such conduct; and,
4. All third parties with whom MTSU has an educational or business relationship who have been a victim of sexual misconduct, discrimination, and/or harassment when the conduct has a reasonable connection to the institution.

B. Except as stated in Section II. C. below, this policy applies to all University programs and activities, including, but not limited to, sexual misconduct, 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.

C. This policy does not apply to allegations or conduct covered by [Policy 29 Title IX Compliance \(/policies/governance-and-compliance/029.php\)](#). Any allegations or conduct covered by Policy 29 will be investigated and adjudicated exclusively under the procedures set forth in that policy. In the event that any such allegations or conduct are determined to be outside the coverage of Policy 29, those claims may be subject to investigation and adjudication under this policy or other applicable University policy.

D. In addition, the law prohibits retaliation against an individual for opposing any practices forbidden under this policy, for bringing a complaint of sexual misconduct, discrimination, or harassment, for assisting someone with such a complaint, for attempting to stop such conduct, or for participating in any manner in an investigation or resolution of a complaint of sexual misconduct, discrimination, or harassment. It is central to the values of this University that any individual who believes they may have been the target of unlawful sexual misconduct, discrimination, or harassment feel free to report their concerns for appropriate investigation and response, without fear of retaliation or retribution. Claims of retaliation for engaging in conduct protected by this policy, [Policy 29 Title IX Compliance \(/policies/governance-and-compliance/029.php\)](#), or other state or federal law pertaining to misconduct, discrimination, or harassment on the basis of sex will be investigated under the procedures set forth in Section X of this policy.

E. 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.

F. Other forms of discrimination are also strictly prohibited and are subject to the procedures described in [Policy 26 Discrimination and Harassment Based on Protected Categories Other Than Sex. \(/policies/governance-and-compliance/026.php\)](#).

### III. Definitions

A. Accuser/Accused and Complainant/Respondent. In most cases, the victim of conduct prohibited by this policy will be referred to as the “accuser” and/or the “complainant” during the process set forth herein. The “accused” will typically be referred to as the “respondent” during this process.

B. Consent. An informed decision, freely given, made through mutually understandable words or actions that indicate a willingness to participate in mutually agreed upon sexual activity. Consent cannot be given by an individual who is asleep, unconscious, or mentally or physically incapacitated, either through the effect of drugs or alcohol or for any other reason, or is under duress, threat, coercion, or force. Past consent does not imply future consent. Silence or an absence of resistance does not imply consent. Consent can be withdrawn at any time.

C. Dating Violence. Violence committed by a person:

1. who is, or has been, in a social relationship of a romantic or intimate nature with the Complainant; and
2. where the existence of such a relationship shall be determined based on a consideration of the following factors:
  - a. The length of the relationship.
  - b. The type of relationship.
  - c. The frequency of interaction between the persons involved in the relationship.

D. Domestic Violence. Violence committed by a current or former spouse or intimate partner of the Complainant, by a person with whom the Complainant shares a child in common, by a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner, by a person similarly situated to a spouse of the Complainant under the laws of the State of Tennessee, or by any other person against an adult or youth Complainant who is protected from that person's acts under the domestic or family violence laws of the State of Tennessee.

E. Retaliation. Action taken against any person because that person has opposed any practices forbidden under this policy, [Policy 29 Title IX Compliance \(/policies/governance-and-compliance/029.php\)](#), or other state or federal law pertaining to misconduct, discrimination, or harassment on the basis of sex, or because that person has filed a complaint, testified, assisted, or participated in any manner in an investigation or proceeding under such policy or law. This includes action taken against a bystander who intervened to stop, or attempted to stop, actual or perceived sexual misconduct, discrimination, or harassment. Retaliation includes intimidating, threatening, coercing, or in any way discriminating against an individual because of the individual's complaint or participation. Action is generally deemed retaliatory if it would deter a reasonable person in the same circumstances from opposing practices prohibited by this policy.

F. Sexual Assault. An offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation.

1. Forcible Sex Offenses. Any sexual act directed against the Complainant, without the consent of the Complainant including instances where the Complainant is incapable of giving consent. Forcible sex offenses include:
  - a. Rape (excluding statutory rape). The carnal knowledge of the Complainant, without the consent of the Complainant, including instances where the Complainant is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity.
  - b. Sodomy. Oral or anal sexual intercourse with the Complainant, without the consent of the Complainant, including instances where the Complainant is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity.
  - c. Sexual Assault with an Object. To use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of the Complainant, without the consent of the Complainant including instances where the Complainant is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity. An “object” or “instrument” as defined in this section is anything used by the offender other than the offender's genitalia (e.g., a finger or bottle).

d. Fondling. The touching of the private body parts of the Complainant for the purpose of sexual gratification, without the consent of the Complainant, including instances where the Complainant is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity.

2. Nonforcible Sex Offenses. Nonforcible sex offenses include:

a. Incest. Nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

b. Statutory Rape. Nonforcible sexual intercourse with a person who is under the statutory age of consent.

G. Sexual Discrimination. Treating individuals less favorably because of their sex (including pregnancy or sexual orientation/gender identity/expression) or having a policy or practice that has a disproportionately adverse impact on protected class members.

H. Sexual Exploitation. Engaging in any action that takes nonconsensual or abusive sexual advantage of another person or persons. This activity may be to harm the exploited person, or for the actor's own advantage or benefit, or to benefit or advantage anyone other than the one being exploited; such advantage may include financial gain, sexual arousal/gratification, or other benefit. Examples of such behavior include, but are not limited to: invasion of sexual privacy; recording or broadcasting sexual activity, including redistribution of pictures, video, or audio; engaging in voyeurism; facilitating or allowing voyeurism without the consent of all parties; knowingly exposing another to a sexually transmitted disease; inducing another person or persons to commit an inappropriate sexual act, or; inducing incapacitation in another person with the intent to engage in sexual conduct, regardless of whether prohibited sexual conduct actually occurs.

I. Sexual Harassment (student-on-student): Pursuant to T.C.A. § 49-7-2406, for purposes of allegations of sexual harassment where both the accused and the accuser are students, sexual harassment is defined as unwelcome conduct directed toward a person on the basis of sex that is so severe, pervasive, and objectively offensive that it effectively bars the accuser's access to an educational opportunity or benefit.

J. Sexual Harassment. In all other instances involving allegations of sexual harassment not addressed in Section III. H., above, sexual harassment is defined to include unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature, including sexual assault, where a tangible employment or educational action is conditioned upon submission to or rejection of unwelcome sexual advances, or where conduct is so severe, pervasive, or objectively offensive that the individual is effectively denied equal access to the University's resources and opportunities. Sexual harassment, including sexual assault, can involve persons of the same or opposite sex.

Harassment does not have to include intent to harm, be directed at a specific person or group of people, or involve repeated incidents. Sex-based harassment includes sexual harassment, which is further defined below, and non-sexual harassment based on stereotypical notions of what is female/feminine versus male/masculine or a failure to conform to those gender stereotypes.

1. Consistent with the law, this policy prohibits two (2) types of sexual harassment:

a. Tangible Employment or Educational Action. This type of sexual harassment occurs when the terms or conditions of employment, educational benefits, academic grades or opportunities, living environment, or participation in a University activity is conditioned upon, either explicitly or implicitly, submission to or rejection of unwelcome sexual advances or requests for sexual favors, or such submission or rejection is a factor in decisions affecting that individual's employment, education, living environment, or participation in a University program or activity. Generally, perpetrators will be agents or employees with some authority from the University.

b. Hostile Environment. A hostile environment based on sex exists when harassment 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 harassment that creates a hostile environment (hostile environment harassment) violates this policy. A hostile environment can be created by anyone involved in a University program or activity (i.e., administrators, faculty members, students, and even campus guests). Mere offensiveness is not enough to create a hostile environment. Although repeated incidents increase the likelihood that harassment has created a hostile environment, a single serious incident, such as a sexual assault, even if isolated, can be sufficient.

In determining whether harassment has created a hostile environment, consideration will be given not only as to whether the conduct was unwelcome to the person who feels harassed, but also whether a reasonable person in a similar situation would have perceived the conduct as objectively offensive. Also, the following factors will be considered:

- (1) The degree to which the conduct affected one or more students' education or individuals' employment;
- (2) The nature, scope, frequency, duration, and location of the incident or incidents;
- (3) The identity, number, and relationships of persons involved; and

(4) The nature of higher education.

2. Examples of conduct that might rise to the level of sexual harassment include, but are not limited to, the following:
- a. Refusing to hire, promote, or grant or deny certain privileges because of acceptance or rejection of sexual advance s;
  - b. Promising a work-related benefit or a grade, or other educational or employment benefit, in return for sexual favor s;
  - c. Suggestive or inappropriate communications, email, notes, letters, or other written materials displaying objects or pictures, which are sexual in nature, that would create hostile or offensive work, living, or educational environments;
  - d. Sexual innuendoes, comments, and remarks about a person's clothing, body, or activities;
  - e. Suggestive or insulting sounds;
  - f. Whistling in a suggestive manner;
  - g. Humor and jokes about sex that denigrate others on the basis of their sex (including pregnancy or sexual orientation/gender identity/expression);
  - h. Sexual propositions, invitations, or pressure for sexual activity;
  - i. Use in the classroom of sexual jokes, stories, remarks, or images that are in no way or only marginally relevant to the subject matter of the class;
  - j. Implied or overt sexual threats;
  - k. Suggestive or obscene gestures;
  - l. Patting, pinching, and other inappropriate touching;
  - m. Unnecessary touching or brushing against the body;
  - n. Attempted or actual kissing or fondling;
  - o. Suggestive or inappropriate acts, such as comments, innuendoes, or physical contact based on one's actual or perceived sexual orientation and/or gender identity/expression;
  - p. Graphic or written statements (including the use of cell phones and the internet), or other conduct that may be physically threatening, harmful, or humiliating in a manner related to sex.
- K. Sexual Misconduct. For the purposes of this policy, sexual misconduct is defined as dating violence, domestic violence, stalking, sexual exploitation, and sexual assault.
- L. Stalking. Engaging in a course of conduct directed at a specific person that would cause a reasonable person to:
1. Fear for their safety or the safety of others; or
  2. Suffer substantial emotional distress.

#### IV. Reporting Sexual Misconduct, Discrimination, and Harassment

**See flow chart** ([/policies/governance-and-compliance/027\\_FLOWCHART-2020.pdf](/policies/governance-and-compliance/027_FLOWCHART-2020.pdf)) **of the reporting, investigation, and hearing process.**

A. Making a Report. Any person may report conduct in violation of this policy (whether or not the person reporting is the person alleged to be the victim of conduct) in person, by mail, by telephone, or by electronic mail, MTSU's online reporting portal, or by any other means that results in the Assistant to the President for Institutional Equity and Compliance (IE&C) receiving the person's verbal or written report. Such a report may be made at any time (including during non-business hours) by using the telephone number, online reporting portal, or electronic mail address, or by USPS or campus mail to the office address, listed for IE&C.

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B. The following MTSU employees are required to report sex discrimination, including sexual harassment, of which they become aware, to the IE&C:

1. Title IX Coordinator and Deputy Coordinators;
2. University Police;
3. Residence hall/housing area coordinators, resident directors, and resident assistants;
4. President, Provost, Vice Provosts, Associate Vice Provosts, Assistant Vice Provosts, Vice Presidents, Associate Vice Presidents, Assistant Vice Presidents;
5. Deans, Associate Deans, Assistant Deans, Directors, Associate Directors, Assistant Directors, Department Chairs/Heads;
6. Faculty and graduate assistants;
7. Advising managers;
8. Advisors for student organizations;
9. Athletic coaches and trainers;
10. Athletic Director, Associate Athletic Director(s), and Assistant Athletic Directors; and
11. Campus Security Authorities.

C. When a complainant reports an incident of sexual misconduct to one of the individuals listed above, that individual must report to IE&C all relevant details about the alleged sexual misconduct, discrimination, or harassment. Once it is apparent to the individual that the complainant is disclosing an incident of sexual misconduct, discrimination, or harassment, the individual should ensure that the complainant understands the individual's reporting obligations. If the complainant wants to maintain confidentiality, the individual receiving the report should direct the complainant to confidential resources.

D. MTSU will not pressure a complainant to request confidentiality but will honor and support the complainant's wishes, including that MTSU fully investigate an incident. By the same token, MTSU will not pressure a complainant to make a full report if the complainant is not ready to do so.

E. MTSU will take immediate and appropriate steps to investigate what happened and to resolve the matter promptly and equitably. Information reported will be shared only with individuals responsible for handling the University's response to the report.

F. MTSU will not share information with law enforcement without the complainant's consent.

G. All reports of sexual misconduct, discrimination, and/or harassment made to University Police will automatically be referred to IE&C for review, even if the complainant declines to pursue criminal charges.

H. How MTSU will weigh a request for confidentiality. If a complainant discloses an incident to MTSU but wishes to maintain confidentiality or requests that no investigation into a particular incident be conducted or disciplinary action taken, the University will weigh that request against its obligation to provide a safe, non-discriminatory environment for all students, including the complainant.

1. If MTSU honors the request for confidentiality, the complainant should understand that the University's ability to meaningfully investigate the incident and pursue disciplinary action against the alleged perpetrator(s) may be limited.
2. In some cases, MTSU may not be able to honor a complainant's request for confidentiality in order to provide a safe, non-discriminatory environment for all students.

3. IE&C will evaluate requests for confidentiality. When weighing a complainant's request for confidentiality or that no investigation or discipline be pursued, IE&C will consider a range of factors, including the increased risk that the alleged perpetrator will commit additional acts of sexual or other misconduct, such as:

- a. Whether there have been other sexual misconduct, discrimination, and/or harassment complaints about the same alleged perpetrator;
  - b. Whether the alleged perpetrator has a history of arrests or records from a prior school indicating a history of misconduct, discrimination, or harassment;
  - c. Whether the alleged perpetrator threatened further sexual misconduct, discrimination, and/or harassment or other misconduct against the complainant or others;
  - d. Whether the sexual misconduct, discrimination, and/or harassment was committed by multiple perpetrators;
  - e. Whether the sexual misconduct, discrimination, and/or harassment was perpetrated with a weapon;
  - f. Whether the victim is a minor;
  - g. Whether MTSU possesses other means to obtain relevant evidence of the sexual misconduct, discrimination, and/or harassment; or
  - h. Whether the complainant's report reveals a pattern of perpetration at a given location or by a particular group.
4. The presence of one or more of these factors could lead MTSU to investigate and, if appropriate, pursue disciplinary actions.
5. If none of these factors is present, MTSU will likely respect the complainant's request for confidentiality.
6. If MTSU determines that it cannot maintain a complainant's confidentiality, IE&C will inform the complainant prior to starting an investigation and will, to the extent reasonably possible, only share information with people responsible for handling the University's response.
7. Even if MTSU is unable to grant a complainant's request for confidentiality, MTSU will not require a complainant to participate in any investigation or disciplinary proceeding without their consent.

## V. Investigation Requirements and Procedures

A. All complaints of sexual misconduct, discrimination, and/or harassment will be presented to IE&C to oversee the investigation and appropriate disposition of the complaint. Complaints involving sexual misconduct, discrimination, and/or harassment will be investigated by a qualified, sufficiently trained (see Section V. C., below) individual appointed by IE&C. If the complaint involves personnel in any of the offices indicated below, the complaint may be investigated by any other office.

**All complaints of sexual misconduct, discrimination, and/or harassment, whether against students, faculty, staff or visitors:**

### **Christy Sigler**

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**Complaints of sexual misconduct, discrimination, and/or harassment against students:**

### **Laura Sosh-Lightsy**

Assistant Dean, Office of Student Conduct  
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**Complaints of sexual misconduct, discrimination, and/or harassment against MTSU students and employees in athletics (including complaints regarding gender equity in athletics):**

**Diane Turnham**

Senior Associate Athletic Director/Senior Women's Administrator

151 Murphy Center

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[diane.turnham@mtsu.edu](mailto:diane.turnham@mtsu.edu) (<mailto:dturnham@mtsu.edu>).

B. MTSU will conduct an adequate, reliable, and impartial investigation in a timely manner, providing the respondent and complainant equitable rights during the investigative process.

C. The investigator shall receive (1) training that either satisfies the requirements of Title IX of the Education Amendments of 1972 (20 U.S.C. § 1981), the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (20 U.S.C. § 1092 (f)), and the federal regulations implementing those statutes, as amended; or (2) training developed and conducted by the Tennessee Law Enforcement Innovation Center for investigators of sexual misconduct allegations.

D. The Office of the University Counsel (OUC) shall always be consulted prior to and throughout the investigation.

E. The investigator shall also notify the President that an investigation is being initiated.

F. The parties shall notify the investigator of any need for language assistance or accommodation of disabilities.

G. With the voluntary written consent of both parties, informal resolution may be attempted in cases alleging violations of this policy. Prior to any attempted informal resolution, both parties shall receive full disclosure of the allegations and their options for a formal resolution.

H. During the course of the investigation, MTSU will endeavor to gather sufficient evidence to reach a fair and impartial determination as to whether sexual discrimination, harassment, or misconduct occurred and, if so, whether a hostile environment has been created that must be redressed.

I. Initiating an investigation

1. Absent good cause, within seven (7) business days of the investigator's receipt of a report of sexual misconduct, discrimination, and/or harassment, the investigator shall notify the complainant and request a meeting. The investigator should provide written notice to the complainant of their rights with regard to this process in advance of the interview with sufficient time to prepare for meaningful participation.

2. The investigator shall attempt to get a written statement from the complainant that includes information related to the circumstances giving rise to the complaint, the dates of the alleged occurrences, and names of witnesses, if any. The complainant should be encouraged to complete a complaint form and submit a detailed written report of the alleged incident. When the complainant chooses not to provide a written complaint, the investigator will still investigate to the extent possible and take appropriate action.

3. Both before and during the pendency of the investigations, the investigator shall consult with the complainant and respondent and consider what, if any, supportive measures may be necessary. See Section IX, below for more information related to supportive measures.

4. Complaints made anonymously or by a third party will be investigated to the extent possible. Anonymous reports may be made online at <http://mtsu.edu/sexual-violence/reporting-form.php> (<http://mtsu.edu/sexual-violence/reporting-form.php>).

5. If the investigator determines after consulting with the OUC that the complaint contains an allegation of sexual misconduct, discrimination, and/or harassment covered by this policy, the investigator shall follow the procedures set forth in this policy to investigate and adjudicate the complaint.

6. Only one person shall be identified as the primary investigator for a complaint. The primary investigator may assign investigatory duties to other properly trained individuals, as appropriate.

7. Investigations shall be conducted by officials who do not have a conflict of interest or bias for or against the complainant or respondent.

a. If the complainant or respondent believes the assigned investigator has a conflict of interest, that party must submit a written explanation of the reason for that belief to the Assistant Vice President for Human Resource Services (HRS). The explanation must be submitted within three (3) business days, absent good cause, of the time when the party knew or should have known the facts that would give rise to the alleged conflict of interest. The Assistant Vice President for HRS will determine if the facts warrant the appointment of a different investigator and will respond to the party in writing within three (3) business days, absent good cause. The decision of the Assistant Vice President for HRS shall be final.

b. When the allegation of misconduct, discrimination, or harassment is against the Assistant to the President for Institutional Equity and Compliance, 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 misconduct, discrimination, or harassment is against the President, IE&C 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.

J. What the investigation should and should not entail:

1. The investigator shall provide written notice to the complainant and respondent of the extent to which the University will allow a licensed attorney or other advisor to represent or advise the student in an investigation or student disciplinary proceeding.
2. Once the investigator determines that an investigation that may lead to disciplinary action against the respondent is necessary, the investigator should provide written notice to the respondent of the allegations constituting a potential violation of this policy, if known, including sufficient details and with sufficient time to prepare a response before any initial interview. Sufficient details include the identities of the parties involved, the date and time of the alleged incident, the specific violation alleged, and the conduct allegedly constituting the violation.
3. The investigator shall notify the complainant, respondent, and all individuals interviewed during the investigation that retaliation is strictly prohibited and may be grounds for disciplinary action. In addition, the investigator shall advise all interviewees that they should contact the investigator immediately if they believe they are being retaliated against.
4. The investigation shall include interviews with both the complainant and respondent, unless either declines an in-person interview.
5. The complainant and respondent shall be provided with the same opportunities to have others present during an interview, including the opportunity to be accompanied by the advisor of their choice to any related meeting or proceeding.
6. The University will not limit the choice of advisor for either the complainant or respondent; however, advisors will be limited to an advising role only and may not otherwise participate in the proceedings.
7. The investigation shall include interviews with relevant witnesses identified by the complainant and respondent and any other potential, relevant witness made known to the investigator via other means.
8. The investigation shall include the gathering and reviewing of any documentary, electronic, physical, or other type of relevant evidence.
9. The investigator is expected to request a list of relevant witnesses and evidence from the complainant and respondent and take such into consideration.
10. The investigator shall not consider any evidence about the complainant's prior sexual conduct with anyone other than the respondent. Evidence of a prior consensual dating or sexual relationship between the parties does not itself imply consent or preclude a finding of sexual misconduct, discrimination, and/or harassment.

K. 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 their 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. The requirement to provide notice will be satisfied when notice is sent as indicated, and any period for response will begin on the date the email and/or letter is sent, whichever is sent first.

## VI. Outcome of Investigation and Determination of Appropriate Action

A. Upon completion of the investigation and in consultation with the OUC, the investigator shall prepare a written report that includes 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.

B. It is the responsibility of the investigator to analyze and document the available evidence to support reliable decisions, to objectively evaluate the credibility of the parties and witnesses, to determine the weight to be given to information received during the course of the investigation, to synthesize all available evidence – including both inculpatory and exculpatory evidence – and to take into account the unique and complex circumstances of each case.



C. After review and comment by the OUC and IE&C, the report shall be delivered by the investigator to the appropriate decision maker for a determination. 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 HRS. If the respondent is a third party, the matter shall be referred to the Vice President for Business and Finance or designee.

D. After review of the report and in consultation with the OUC, the decision maker shall make a determination based on a preponderance of the evidence presented as to whether or not a violation of this policy occurred and the appropriate discipline.

E. The decision maker's determination will be returned to the investigator who will provide simultaneous written notification of the outcome to the complainant and the respondent in the following way:

1. Both parties shall be notified of whether or not it was found that the alleged conduct occurred, including any initial, interim, or final decisions by the University, and their rights to appeal the decision to the President.
2. In sexual misconduct cases, the written notice provided to both parties shall also include any sanctions imposed on the respondent and the rationale for the result and the sanctions. In cases covered by this policy that do not constitute sexual misconduct (i.e., sexual harassment) the written notice provided to the complainant shall only provide notice of the sanctions that directly relate to the complainant, if any.
3. In addition, the complainant shall be informed of any individual remedies offered or provided to the complainant, and other steps taken to eliminate the hostile environment, if one is found to exist, and prevent recurrence. The respondent should not be notified of the individual remedies offered or provided to the complainant.

F. Timeframe for Conducting the Investigation. The timeframe for conducting the investigation will vary based on the complexity of the investigation and the severity and extent of the alleged conduct. The investigator should inform the parties of the status of the investigation periodically.

## **VII. Appeal of Decision to the President**

A. If either the complainant or respondent is dissatisfied with the decision maker's determination, that determination may be appealed to the President by notifying IE&C 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.

B. If a written request for appeal is not received within seven (7) business days, the determination of the decision maker is final.

C. The appealing party(ies) must explain why they believe 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.

D. The President will issue a written response to the appeal as promptly as reasonably 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.

E. If a final decision has been made that a policy violation occurred, IE&C will determine if any remedies are required to address the campus-wide environment, taking into consideration the impact of an incident of sexual misconduct, discrimination, and/or harassment on the campus as a whole and on specific groups or areas on campus. For example, IE&C may determine that specific training is needed for a student group whose members have been accused of sexual assault.

## **VIII. Effect of a Finding of a Violation of this Policy**

A. If a final decision has been made that a policy violation occurred, the respondent shall be referred to the appropriate personnel for implementation of discipline.

B. The appropriate personnel will be determined by the status of the respondent. If the respondent is a student, the matter shall be referred to the Assistant Dean for Office of Student Conduct. If the respondent is a faculty member, the matter will be referred to the Provost. If the respondent is a staff member or third party, the matter shall be referred to the Assistant Vice President for HRS.

C. If the respondent is a student, the University will follow the procedures for disciplining students as described in Policy 540 Student Conduct (<http://www.mtsu.edu/policies/student-affairs/540.php>).

D. If the respondent is a faculty or staff member, the University will follow the procedures related to disciplining employees as described in the applicable policies.

E. Notwithstanding any policy to the contrary, the following additional requirements apply to disciplinary actions and any hearing related to violations of this policy:

1. The complainant and respondent shall receive sufficient notice of and be allowed to attend any hearing or other proceeding during the disciplinary process.
2. The complainant and respondent shall be allowed to have an advisor of her/his choice attend any hearing or other proceeding during the disciplinary process.
3. The complainant and respondent shall be allowed to testify at any hearing during the disciplinary process, even if neither the University nor the respondent party intends to call the complainant as a witness during the case-in-chief.
4. The complainant and respondent shall be allowed access to any evidence presented during any disciplinary hearing or other proceeding during the disciplinary process.
5. IE&C shall be appointed as the parties' contact for any questions or assistance during the disciplinary process.
6. No earlier than twelve (12) months prior to any hearing (UAPA or institutional hearing) that involves sexual assault, dating violence, domestic violence, sexual exploitation, or stalking, all hearing officers and hearing committee members shall receive, at a minimum, training that satisfies the requirements of Title IX of the Education Amendments of 1972 (20 U.S.C. § 1981), the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (20 U.S.C. § 1092(f)), and the federal regulations implementing those statutes, as amended.
7. If the complainant or respondent believes the hearing officer or any hearing committee member has a conflict of interest, that party must submit a written explanation of the reason for that belief to the Assistant Vice President for HRS. The explanation must be submitted within three (3) business days, absent good cause, of the time when the party knew or should have known the facts that would give rise to the alleged conflict of interest. The Assistant Vice President for HRS, in consultation with the OUC, will determine if a conflict of interest exists under the criteria set forth in C.A. § 4-5-303 or some other basis that warrants the appointment of a different hearing officer or committee member and respond to the party in writing within three (3) business days, absent good cause. The decision of the Assistant Vice President for HRS shall be final.
8. The hearing officer or chair of the hearing committee shall control the procedures of the hearing with due consideration given to the complainant's and respondent's requests related to procedures such as, but not limited to, limitations on cross-examinations, recesses so they may consult with their advisors, and scheduling of hearings. Except as required by applicable law, the hearing officer or chair of the hearing committee shall conduct the proceedings in a manner that does not allow the respondent or the complainant to directly question each other or any witness during the proceeding.
9. The hearing officer/committee shall use a preponderance of the evidence standard when reaching a decision.
10. The hearing officer/committee shall ensure that appropriate due process is provided during the hearing, including any right to cross-examination of parties and witnesses.
11. The complainant and respondent shall be simultaneously notified of the hearing officer's/committee's decision in writing, which shall include notice of their rights to appeal the hearing officer's/hearing committee's determination, if any.

## **IX. Supportive Measures**

A. In situations that require immediate action due to safety or other concerns, the University will take any reasonable administrative action, through supportive measures, that is appropriate. In such situations, IE&C is responsible for implementing the supportive measure(s) after consulting with the OUC. Examples of such supportive measures include, but are not limited to:

1. Ensuring, when possible, that the complainant and respondent do not attend the same classes;
2. Moving the complainant or respondent to a different residence hall or different work spaces;
3. Providing access to counseling services;
4. Providing or assisting in providing medical services;
5. Providing assistance for academic modifications, such as extra time to complete course work or modifications to courses or assignments, where possible;
6. Leaves of absence when possible and appropriate; and
7. Mutual no contact orders.

B. Supportive measures may be applied to one (1), both, or multiple parties involved.

C. Student respondents may be placed on interim suspension under the appropriate circumstances pending the outcome of the investigation. MTSU shall follow Policy 540 Student Conduct (<http://www.mtsu.edu/policies/student-affairs/540.php>) before placing a student respondent on interim suspension.

D. In appropriate circumstances and consistent with Human Resource policies, employee respondents may be placed on administrative leave pending the outcome of the matter.

#### **X. Retaliation**

MTSU faculty, employees, and students are strictly prohibited from retaliating, intimidating, threatening, coercing, or otherwise discriminating against any individual for exercising their rights or responsibilities under any provision of this policy, Policy 29 Title IX Compliance ([/policies/governance-and-compliance/029.php](http://www.mtsu.edu/policies/governance-and-compliance/029.php)), or other state or federal law relating to sexual misconduct, discrimination or harassment. Retaliation will result in disciplinary measures, up to and including termination or expulsion.

Forms: none.

Revisions: June 5, 2017 (original); January 18, 2018; September 5, 2018; September 15, 2020.

Last Reviewed: September 2020.

References: Policies 26 Discrimination and Harassment Based on Protected Categories Other Than Sex; 29 Title IX Compliance; 540 Student Conduct; T.C.A. §§ 36-3-601; 39-17-315; 49-7-129; 49-7-2207; 49-7-2406.