



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

Approved by President

Sidney A. McPhee, President

Effective Date: _____, 2018

Responsible Division: President

Responsible Office: Office of the University Counsel

Responsible Officer: University Counsel

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I. Purpose

This policy is adopted by Middle Tennessee State University (MTSU or University) specifically to address misconduct, discrimination, and harassment based on sex (hereinafter to include claims based on pregnancy or sexual orientation/gender identity/expression) as well as the following offenses defined herein: dating violence, domestic violence, sexual assault, and stalking; and, to establish procedures for responding to incidents of sexual misconduct, discrimination, and harassment. Sexual misconduct and harassment are forms of sexual discrimination prohibited by Title IX and MTSU.

MTSU is committed to eliminating any and all acts of sexual misconduct, discrimination, and harassment on its campus. 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, as defined herein, will be investigated and resolved 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. These procedures shall 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. This policy is adopted specifically to address the offenses defined herein.

C. 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.

- 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 he/she may have been the target of unlawful sexual misconduct, discrimination, or harassment feel free to report his/her concerns for appropriate investigation and response, without fear of retaliation or retribution.

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.

- E. All 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](#).

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. T.C.A. § 36-3-601(5)(c). Violence against a person when the accuser and accused are dating, or who have dated, or who have or had a sexual relationship. “Dating” and “dated” do not include fraternization between two (2) individuals solely in a business or non-romantic social context. Violence includes, but is not necessarily limited to:
1. Inflicting, or attempting to inflict, physical injury on the accuser by other than accidental means;
 2. Placing the accuser in fear of physical harm;
 3. Physical restraint;

4. Malicious damage to the personal property of the accuser, including inflicting, or attempting to inflict, physical injury on any animal owned, possessed, leased, kept, or held by the accuser; or,
5. Placing the accuser in fear of physical harm to any animal owned, possessed, leased, kept, or held by the accuser.

D. Domestic Violence. T.C.A. § 36-3-601.

1. Violence against a person when the accuser and accused:
 - a. Are current or former spouses;
 - b. Live or have lived together as a spouse or intimate partner;
 - c. Are related by blood or adoption;
 - d. Are related or were formally related by marriage; or,
 - e. Are adult or minor children of a person in a relationship described above.
2. Violence includes, but is not necessarily limited to:
 - a. Inflicting, or attempting to inflict, physical injury on the accuser by other than accidental means;
 - b. Placing the accuser in fear of physical harm;
 - c. Physical restraint;
 - d. Malicious damage to the personal property of the accuser, including inflicting, or attempting to inflict, physical injury on any animal owned, possessed, leased, kept, or held by the accuser; or,
 - e. Placing the accuser in fear of physical harm to any animal owned, possessed, leased, kept, or held by the accuser.

E. Responsible Employee. An MTSU employee who has the authority to redress sexual misconduct, discrimination, and/or harassment; who has the duty to report incidents of sexual misconduct, discrimination, and/or harassment; or, whom a student could reasonably believe has this authority or duty. See Section V.D.2. for additional information on responsible employees.

- F. Retaliation. Action taken against any person because that person has opposed any practices forbidden under this policy or because that person has filed a complaint, testified, assisted, or participated in any manner in an investigation or proceeding under this policy. 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.
- G. Sexual Assault. The nonconsensual sexual contact with the accuser by the accused, or the accused by the accuser when force or coercion is used to accomplish the act, the sexual contact is accomplished without consent of the accuser, and the accused knows or has reason to know at the time of the contact that the accuser did not or could not consent. Sexual contact includes, but is not limited to, the intentional touching of the accuser's, the accused's, or any other person's intimate parts, or the intentional touching of the clothing covering the immediate area of the accuser's, the accused's, or any other person's intimate parts, if that intentional touching can be reasonably construed as being for the purpose of sexual arousal or gratification.

H. 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.

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. I., 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:

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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.

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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.

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In determining whether harassment has created a hostile environment, consideration will be made 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 individual's 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. ▾

Deleted: The examples listed below are not exclusive, but simply represent types of conduct that may constitute sexual harassment.

a. Refusing to hire, promote, or grant or deny certain privileges because of acceptance or rejection of sexual advances;

b. Promising a work-related benefit or a grade in return for sexual favors;

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 men or women;
- 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, and sexual assault.
- L. Stalking. T.C.A. § 39-17-315. A willful course of conduct involving repeated or continuing harassment of another individual that would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed, or molested, and that actually causes the accuser to feel terrorized, frightened, intimidated, threatened, harassed, or molested. Harassment means conduct directed toward the accuser that includes, but is not limited to, repeated or continuing unconsented contact that would cause a reasonable person to suffer emotional distress, and that actually causes the accuser to suffer emotional distress. Harassment does not include constitutionally protected activity or conduct that serves a legitimate purpose.

M. Title IX Coordinator. The Title IX Coordinator is the MTSU official responsible for overseeing the University's response to sexual misconduct, discrimination, and harassment reports and complaints and for addressing any patterns or systemic problems identified by such reports and complaints. This official oversees and coordinates the University's programs and training efforts with regard to sexual misconduct, discrimination, and harassment. The Title IX Coordinator conducts investigations and has the authority to implement all interim measures deemed appropriate. The Title IX Coordinator has delegated investigatory responsibility to Deputy Title IX Coordinators who are also authorized to implement appropriate interim measures. All requests by complainants for confidentiality should be evaluated by the Title IX Coordinator in conjunction with the Office of the University Counsel. Refer to Section VI. for additional information on the Title IX Coordinator.

IV. Immediate Actions a Victim Should Take

- A. In the immediate aftermath of a sexual assault, domestic violence, dating violence or similar event, the most important thing is for the victim to get to a safe place.
- B. When a feeling of safety has been achieved, the victim should seek medical attention, regardless of his/her decision to report the crime to the police. It is very important for the victim of sexual assault to seek medical attention immediately so that the victim can be screened for sexually transmitted diseases/pregnancy/date rape drugs, obtain emergency contraception, and receive treatment for any physical injuries.
- C. A victim has the right to accept or decline any or all parts of a medical exam. However, critical evidence may be lost or missed if not collected or analyzed.
- D. Valuable physical evidence can be obtained from the victim and the victim's clothing. A victim should make every effort to save anything that might contain the offender's DNA. Therefore, a victim should not:
 - 1. Bathe or shower;
 - 2. Wash his/her hands;
 - 3. Brush his/her teeth;
 - 4. Use the restroom;
 - 5. Change clothes;
 - 6. Comb hair;
 - 7. Clean up the area where the incident took place; or
 - 8. Move anything the offender may have touched.

- E. Even if the victim has not yet decided to report the crime, receiving a forensic medical exam and keeping the evidence safe from damage will improve the chances that the police can access and test the stored evidence at a later date should the victim decide to prosecute.
- F. Victims of sexual misconduct, discrimination, and harassment are encouraged to preserve evidence by saving text messages, instant messages, social networking pages, other communications, and keeping pictures, logs, or other copies of documents, if they have any that would be useful to investigators.

V. Reporting Sexual Misconduct, Discrimination, and Harassment

See [flow chart](#) of the reporting, investigation, and hearing process.

- A. Do not wait to report conduct of concern until the conduct becomes sufficiently serious (i.e., severe, pervasive, or persistent) to create a hostile environment. The Title IX Coordinator and Deputy Title IX Coordinators can take proactive steps to prevent the conduct from continuing and perhaps escalating, and to protect or otherwise assist the victim. For example, the University can arrange for no-contact orders, counseling, and changes in class schedules, living arrangements, class requirements, and testing schedules as needed. The Title IX Coordinator and Deputy Title IX Coordinators can also provide expertise and advice to help identify conduct that might be a warning sign of or constitute sexual misconduct, discrimination, or harassment prohibited by this policy and address any concerns or complaints appropriately.
- B. MTSU encourages victims of sexual misconduct, discrimination, and harassment to talk to somebody about what happened so they can get the support they need and so that MTSU can respond appropriately. Though MTSU will keep reports as confidential as possible, it cannot guarantee the confidentiality of every report or complaint. The provisions in Section D. below, detail the confidentiality options available to individuals.
- C. A student who is a victim of sexual misconduct and who was under the influence of alcohol or drugs during the sexual misconduct incident should not be reluctant to seek assistance for fear of being sanctioned for his/her improper use of alcohol or drugs. The Office of Student Conduct will generally not pursue disciplinary violations against the victim (or against a witness) for his/her improper use of alcohol or drugs (i.e., underage drinking), if the victim or witness is making a good faith report of sexual misconduct. Amnesty for improper use of alcohol or drugs will not be accorded to a student charged with sexual misconduct. This practice only applies to amnesty from violations of [Policy 540 Student Disciplinary Rules](#). It does not grant amnesty for criminal, civil, or legal consequences for violations of federal, state, or local law.
- D. Reporting confidentially.
 - 1. Reports to designated sexual assault care providers (including victim's advocates designated as such by the University), professional licensed counselors (including the MTSU Counseling

Center), or to professional medical healthcare providers (including the MTSU Student Health Center) are confidential in every respect, to the extent allowed by law.

- a. Professional licensed counselors who provide mental health counseling to MTSU's campus community, including those who act in that role under the supervision of a licensed counselor (counselors), are not required to report any information about an incident to the Title IX Coordinator and will not do so without a victim's written permission.
 - (1) Students may utilize the MTSU Counseling Center, Keathley University Center, Room 326-S.
 - (2) Employees may utilize the Employee Assistance Program (EAP) <http://www.here4tn.com/>.
 - (3) Both students and employees may utilize the Domestic Violence and Sexual Assault Program, 2106 East Main Street, 24-hour Crisis Line (615) 494-9262 or (615) 896-2012, or other professional counselors.
- b. Professional medical healthcare providers, including those who act in that role under supervision of a licensed healthcare provider (doctors), are not required to report any information about an incident to the Title IX Coordinator and will not do so without a victim's written permission.
 - (1) Students may utilize the MTSU Student Health Center or a provider of their choice.
 - (2) Employees must utilize a healthcare provider of their choice.
- c. Designated sexual assault care providers, counselors, and doctors will maintain confidentiality of any such reports unless required by law or court order to disclose the information. For example, Tennessee's mandatory reporting law related to abuse of minors, imminent harm to others, or subpoenas for testimony may require disclosure of all information received.
- d. A victim who speaks to a designated sexual assault care provider, a counselor, or doctor must understand that if the victim wants to maintain confidentiality, MTSU may be unable to conduct an investigation into the incident or pursue disciplinary action against the alleged perpetrator(s).
- e. Designated sexual assault care providers, counselors, and doctors affiliated with MTSU (i.e., MTSU Counseling Services or Student Health Center) can assist the victim in receiving other necessary protection and support, such as victim advocacy, academic support or accommodations, disability, health or mental health services, and changes to living, working, or course schedules. In some cases, providing requested assistance might require the provider, counselor, or doctor to reveal identifying information to

other individuals. Written permission from the victim to reveal the minimum information necessary to arrange requested assistance will be obtained prior to disclosure.

2. Reports to a responsible employee will not be absolutely confidential but will be handled in as confidential a manner as possible.
 - a. When a complainant tells a responsible employee (as defined in Section III.) about an incident of sexual misconduct, discrimination, or harassment, the responsible employee must report to the Title IX Coordinator all relevant details about the alleged sexual misconduct, discrimination, or harassment.
 - b. MTSU will take immediate and appropriate steps to investigate what happened and to resolve the matter promptly and equitably.
 - c. Information reported to a responsible employee will be shared only with people responsible for handling the University's response to the report.
 - d. A responsible employee shall not share information with law enforcement without the complainant's consent or unless the complainant has also reported the incident to law enforcement.
 - e. Employees in the following list are designated as responsible employees:
 - (1) President, Senior Vice President, Provost, Vice Presidents, Associate Vice Presidents, Assistant Vice Presidents;
 - (2) Deans, Associate Deans, Assistant Deans, Directors, Associate Directors, Assistant Directors, Department Chairs/Heads;
 - (3) Faculty and graduate assistants;
 - (4) Academic advisors;
 - (5) Advisors for student organizations;
 - (6) Residence hall/housing area coordinators, resident directors, and resident assistants;
 - (7) Athletic coaches and trainers;
 - (8) Title IX Coordinator, Title IX Deputy Coordinators, and designees;
 - (9) University Police; and
 - (10) Campus Security Authorities.

- f. Before a complainant reveals any information to a responsible employee, the responsible employee must ensure that the complainant understands the responsible employee's reporting obligations.
 - g. If the complainant wants to maintain confidentiality, the responsible employee must direct the complainant to confidential resources.
 - h. If the complainant wants to tell the responsible employee what happened but also maintain confidentiality, the responsible employee must advise the complainant that the request will be considered, but no guarantee can be given that the University will be able to honor it. In reporting the details of the incident to the Title IX Coordinator, the responsible employee will also inform the Title IX Coordinator of the complainant's request for confidentiality.
 - i. Responsible employees will not pressure a complainant to request confidentiality but will honor and support the complainant's wishes, including for MTSU to fully investigate an incident. By the same token, responsible employees will not pressure a complainant to make a full report if the complainant is not ready to do so.
3. All reports of sexual misconduct, discrimination, and/or harassment made to University Police will automatically be referred to the Title IX Coordinator for review and investigation, even if the complainant declines to pursue criminal charges.

Reporting to University Police (Nottingham Act requirements).

- a. Unless the victim of a sexual assault does not consent to the reporting of an offense, University Police shall immediately notify the Murfreesboro Police Department if a MTSU police officer is in receipt of a report from the victim alleging that any degree of rape has occurred on MTSU property. The MTSU Chief of Police shall designate one (1) or more persons who shall have the authority and duty to notify the Murfreesboro Police Department in his/her absence. In the case of an alleged rape, University Police and the Murfreesboro Police Department shall jointly investigate the incident. University Police shall lead the investigation. The Murfreesboro Police Department and University Police shall cooperate in every respect in the investigation. T.C.A. § 49-7-129.
 - b. If the victim does not consent to the reporting, the chief security officer or chief law enforcement officer of each institution shall not report the offense to the local law enforcement agency. T.C.A. § 49-7-2207; Public Acts 2005, Chapter 305.
4. Reports that are not considered "notice" to the University
- a. Public awareness events such as Take Back the Night, the Clothesline Project, candlelight vigils, protests, survivor speak outs, or other forums, including social media and class discussions, in which students disclose incidents of sexual misconduct,

discrimination, and/or harassment are not considered notice to MTSU of sexual misconduct, discrimination, and/or harassment for purposes of triggering its obligation to investigate any particular incident(s).

- b. Such events may, however, inform the need for campus-wide education and prevention efforts, and MTSU will provide information about students' Title IX rights at these events.
5. How MTSU will weigh a request for confidentiality.
- a. If a complainant discloses an incident to a responsible employee 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.
 - b. 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.
 - c. In some cases, MTSU may not be able to honor a complainant's request in order to provide a safe, non-discriminatory environment for all students.
 - d. The Title IX Coordinator will evaluate requests for confidentiality once a responsible employee is on notice of alleged sexual misconduct, discrimination, and/or harassment.
 - e. When weighing a complainant's request for confidentiality or that no investigation or discipline be pursued, the Title IX Coordinator 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:
 - (1) Whether there have been other sexual misconduct, discrimination, and/or harassment complaints about the same alleged perpetrator;
 - (2) Whether the alleged perpetrator has a history of arrests or records from a prior school indicating a history of misconduct, discrimination, or harassment;
 - (3) Whether the alleged perpetrator threatened further sexual misconduct, discrimination, and/or harassment or other misconduct against the complainant or others;
 - (4) Whether the sexual misconduct, discrimination, and/or harassment was committed by multiple perpetrators;
 - (5) Whether the sexual misconduct, discrimination, and/or harassment was perpetrated

with a weapon;

- (6) Whether the victim is a minor;
 - (7) Whether MTSU possesses other means to obtain relevant evidence of the sexual misconduct, discrimination, and/or harassment; or
 - (8) Whether the complainant's report reveals a pattern of perpetration at a given location or by a particular group.
- f. The presence of one or more of these factors could lead MTSU to investigate and, if appropriate, pursue disciplinary actions.
 - g. If none of these factors are present, MTSU will likely respect the complainant's request for confidentiality.
 - h. If MTSU determines that it cannot maintain a complainant's confidentiality, the Title IX Coordinator will inform the complainant prior to starting an investigation and will, to the extent possible, only share information with people responsible for handling the University's response.
 - i. MTSU will not require a complainant to participate in any investigation or disciplinary proceeding.

E. Filing an Institutional Complaint

- 1. A complaint can be filed directly with these individuals:

Title IX Coordinator

Marian V. Wilson, Ph.D.
Assistant to the President, Institutional Equity and Compliance
116 Cope Administration Building
1301 East Main Street
Murfreesboro, TN 37132
(615) 898-2185
marian.wilson@mtsu.edu

Deputy Title IX Coordinators

Laura Sosh-Lightsy
Assistant Dean, Office of Student Conduct
208 Keathley University Center
1301 East Main Street
Murfreesboro, TN 37132
(615) 898-2750

laura.lightsy@mtsu.edu

Diane Turnham
Associate Athletic Director/Senior Women's Administrator
150A Murphy Center
1301 East Main Street
Murfreesboro, TN 37132
(615) 898-2938
diane.turnham@mtsu.edu

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

2. The University shall not share personally identifiable information with law enforcement without the victim's consent or unless the victim has also reported the incident to law enforcement.

- F. Inquiries or complaints concerning Title IX also may be referred to the U.S. Department of Education:

U.S. Department of Education
Office for Civil Rights
61 Forsyth Street, S.W., Suite 19T10
Atlanta, GA 30303-8927
(404) 974-9406 (phone)
(404) 974-9471 (fax)
ocr.atlanta@ed.gov

VI. Role of Title IX Coordinator

- A. The Title IX Coordinator is responsible for overseeing all Title IX incidents reported to the University and for implementation of this policy, including but not limited to, identifying and addressing any systemic gender-based misconduct, discrimination, and/or harassment. The Title IX Coordinator's responsibilities include, but are not limited to, the following:
1. Investigation or oversight of investigations of allegations related to Title IX;
 2. Coordination and oversight of educational programs including mandatory training for new students and employees and awareness campaigns for current students and employees;
 3. Coordination with University Police on matters related to allegations of sexual misconduct;
 4. Coordination and oversight of training for anyone involved in responding to, investigating, or adjudicating sexual misconduct, discrimination, and/or harassment;

5. Coordination and oversight of training for employees related to their responsibility when they are aware of sexual misconduct, discrimination, and/or harassment;
 6. Coordination and oversight of annual training for investigators, decision makers, hearing officers and hearing committee members on the issues related to sexual misconduct, discrimination, and/or harassment and on how to conduct an investigation and hearing process that protects the safety of complainants and promotes accountability; and
 7. Attending appropriate training annually on topics related to responding to or investigating allegations of sexual misconduct, discrimination, and harassment.
- B. The Title IX Coordinator may designate deputies and investigators (designees) to assist in carrying out any of the responsibilities related to implementing this policy.

VII. Investigation Requirements and Procedures

- A. MTSU will conduct an adequate, reliable and impartial investigation in a timely manner, providing the respondent and complainant equitable rights during the investigative process.
- B. All complaints of sexual misconduct, discrimination, and/or harassment shall be presented to the Title IX Coordinator or Deputy Title IX Coordinator for investigation and appropriate disposition. The Title IX Coordinator must always be informed by a Deputy Title IX Coordinator of the receipt of a complaint.
- C. Complaints involving sexual misconduct, discrimination, and/or harassment will be investigated by the Title IX Coordinator, a Deputy Title IX Coordinator, or a qualified, sufficiently trained person appointed by the Title IX Coordinator (Investigator).
- D. The Office of the University Counsel (OUC) shall always be consulted prior to and throughout the investigation. The investigation will be under the direction of the OUC, and all investigatory notes and other documents created or gathered during the investigatory process shall be attorney work product.
- E. The investigator shall also notify the President and any other appropriate coordinator (i.e., Title VI or ADA/Section 504) that an investigation is being initiated.

F. 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.

G. 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.

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Deleted: include a prompt, fair,

Deleted: and result. The University will provide

Deleted: Mediation between the complainant and respondent will never be considered an appropriate resolution in sexual assault cases. With the consent of the complainant, mediation may be attempted in cases involving sexual discrimination, harassment, and misconduct that does not constitute sexual assault. ¶

H. 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 his/her 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, interim measures may be necessary. See Section XIII. below for more information related to interim 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>.
5. After consultation with the OUC, if the investigator determines that the complaint contains an allegation of sexual misconduct, discrimination, and/or harassment, 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.
8. 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.

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9. When the allegation of discrimination or harassment is against the Assistant to the President for Institutional Equity and Compliance (IE&C) , the Assistant Dean of Office of Student Conduct, or the Title VI, Title IX, or ADA/Section 504 Coordinator, 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 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.

I. What the investigation should and should not entail:

1. 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.

2. 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.
3. The investigation shall include interviews with both the complainant and respondent, unless either declines an in-person interview.
4. 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.
5. 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.
6. 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.
7. The investigation shall include the gathering and reviewing of any documentary, electronic, physical, or other type of relevant evidence.
8. The investigator is expected to request a list of relevant witnesses and evidence from the complainant and respondent and take such into consideration.

Deleted: Once the investigator receives the complaint, the investigator shall notify the complainant and request a meeting. The complainant shall be notified in writing of his/her rights with regard to this process.¶

¶ The investigator shall also notify the respondent in writing of the complaint and his/her rights and request a meeting with the respondent. ¶

9. 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 by itself does not imply consent or preclude a finding of sexual misconduct, discrimination, and/or harassment.

J. Notices required by this policy be 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.

VIII. 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. Documents protected by the attorney work-product privilege, such as the investigator's personal notes, should not be attached to the investigation report.
- B. It is the responsibility of the investigator to analyze and document the available evidence to support reliable decisions, 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, and to synthesize all available evidence – including both inculpatory and exculpatory evidence – and take into account the unique and complex circumstances of each case.
- C. After review and comment by the OUC and Title IX Coordinator, 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.

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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. This notice shall include:

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.

Deleted: The respondent shall be notified of all sanctions imposed on him/her, if any. In sexual misconduct cases, the complainant shall receive notice of all sanctions imposed on respondent, if any.

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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 on a periodic basis.

IX. 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 the Title IX Coordinator 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 business (7) days, the determination of the decision maker is final.
- C. 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.
- D. 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.
- E. If a final decision has been made that a policy violation occurred, the Title IX Coordinator shall 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

Deleted: <#>Timeframe for Conducting the Investigation ¶

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<#>Every reasonable effort shall be made to conclude the investigation and resolve the complaint within sixty (60) calendar days following receipt of the complaint. Within this sixty (60) day timeframe, absent good cause, it is expected that the investigator will conclude the investigation, that the investigator will present a report to the decision maker, that the decision maker shall reach a final determination, and that the investigator will notify the parties in writing of the decision maker’s determination. This timeframe does not include an appeal; see Section X. Appeal of Decision to the President.¶

<#>¶
<#>If the investigator or decision maker determines that additional time is needed, after consultation with the OUC, both the complainant and respondent shall be notified in writing of the delay, the anticipated date that the investigation will be concluded, and the reasons for such delay.¶

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<#>If either the complainant or respondent determines that additional time is needed, they shall request such in writing to the investigator. The written request for additional time shall include the reasons for the requested delay and the number of additional days needed. ¶

<#>¶
<#>The investigator shall make every reasonable effort to respond to the request for additional time within two (2) business days following receipt of the request and shall notify both the complainant and respondent in writing as to whether or not the request is granted.¶

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harassment on the campus as a whole and on specific groups or areas on campus. For example, the Title IX Coordinator may determine that specific training is needed for a student group whose members have been accused of sexual assault.

X. 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 Disciplinary Rules](#).
- 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 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. The Title IX Coordinator shall be appointed as the parties' contact person for any questions or assistance during the disciplinary process.
 - 6. All hearing officers and hearing committee members shall receive, at a minimum, annual training on issues related to domestic violence, dating violence, sexual assault, and stalking, and on how to conduct an investigation and hearing process that protects the safety of victims and promotes accountability.

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 the facts warrant 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 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.

XI. Interim Measures

- A. In situations that require immediate action due to safety or other concerns, the University will take any reasonable administrative action, through interim measures, that is appropriate. In such situations, the investigator is responsible for implementing the interim measure(s) after consulting with the Title IX Coordinator and the OUC. Examples of such interim measures include, but are not limited to:
 1. Ensuring 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 academic support services, such as tutoring; and

6. Arranging for the complainant to re-take a course or withdraw from a class. Note: Withdrawal may have serious financial aid implications. Students are encouraged to contact Financial Aid prior to withdrawing.
- B. Interim 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 Disciplinary Rules](#) 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.

XII. Education and Prevention Programs

MTSU will engage in comprehensive educational programming to prevent sexual misconduct, discrimination, and harassment. Educational programming consists of primary prevention and awareness programs for all incoming students and new employees and ongoing awareness and prevention campaigns for students, faculty, and staff that:

- A. Identifies domestic violence, dating violence, sexual assault, stalking, and sexual misconduct, discrimination, and harassment as prohibited conduct;
- B. Defines what behavior constitutes domestic violence, dating violence, sexual assault, stalking, and sexual misconduct, discrimination, and harassment;
- C. Defines what behavior and actions constitute consent to sexual activity in the State of Tennessee;
- D. Provides safe and positive options for bystander intervention that may be carried out by an individual to prevent harm or intervene when there is a risk of domestic violence, dating violence, sexual assault, stalking, and sexual harassment against a person other than the bystander; and
- E. Provides information on risk reduction so that students and employees may recognize warning signs of abusive behavior and how to avoid potential attacks.

XIII. Assistance for Victims of Sexual Misconduct, Discrimination, and Harassment: Rights and Options

Regardless of whether a victim elects to pursue a criminal complaint, MTSU will assist victims of sexual misconduct, discrimination, and/or harassment and will provide each victim with a written explanation of her/his rights as a member of MTSU. Information may be found at <http://www.mtsu.edu/sexual-violence/>.

- A. Additionally, in the Tennessee court system, a victim of domestic violence, dating violence, sexual assault and stalking has the following rights: the right to confer with the prosecution; the right to be free from intimidation, harassment and abuse throughout the criminal justice system; the right to be present at all proceedings where the defendant has the right to be present; the right to be heard, when relevant, at all critical stages of the criminal justice process as defined by the General Assembly; the right to be informed of all proceedings, and of the release, transfer or escape of the accused or convicted person; the right to a speedy trial or disposition and a prompt and final conclusion of the case after the conviction or sentence; the right to restitution from the offender; and the right to be informed of each of the rights established for victims. Information related to these rights may be found at <http://www.tndagc.com/vr.htm>.
- B. Protection from abuse orders is available through <http://www.tncourts.gov/programs/self-help-center/forms/order-protection-forms> and additional information related to such orders is found at [http://www.tncoalition.org/documents/orders-of-protection-\(under-faq\).pdf](http://www.tncoalition.org/documents/orders-of-protection-(under-faq).pdf).
- C. MTSU does not publish the name of crime victims nor maintain identifiable information regarding victims in the Daily Crime Log or in the release of timely warnings.

XIV. Resources for Victims of Sexual Misconduct, Discrimination, and Harassment

- A. The resources listed below are not exhaustive or limited to victims who wish to make an official report or participate in an institutional hearing, police investigation, or criminal prosecution. However, in cases where a victim wishes to maintain complete confidentiality, the victim should review carefully Section V. above related to the limits on the University’s ability to maintain confidentiality.
- B. Information concerning sexual violence is available at: <http://www.mtsu.edu/sexual-violence/>.

C. On Campus Resources

MTSU Sexual Assault Intervention Liaison	(615) 904-8355 Amy.dean@mtsu.edu
MTSU Counseling Services	Keathley University Center #326-S (615) 898-2670
MTSU Student Health Services	1848 Blue Raider Drive (615) 898-2988
University Police	(615) 898-2424 Emergencies: 911
Office of the Title IX Coordinator	Marian V. Wilson, Ph.D. 116 Cope Administration Bldg. (615) 898-2185 Marian.wilson@mtsu.edu
MTSU Student Affairs	Keathley University Center #212 (615) 898-2440

	stuaff@mtsu.edu
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D. In the Murfreesboro Area

Murfreesboro City Police	302 S. Church Street (615) 893-1311 Emergency: 911
St. Thomas Rutherford Hospital	1700 Medical Center Parkway (615) 396-4100 – General Information (615) 396-6902 – Emergency Room
Domestic Violence Intake Center (Protective Orders)	www.tncourts.gov/programs/self-help-center/forms/order-protection-forms
Domestic Violence and Sexual Assault Program	2106 East Main Street (615) 896-7377 24-hour Crisis Line: (615) 494-9262

E. On-line Resources

<http://tncoalition.org/> - State Coalition against Rape
<http://tncoalition.org/> - State Coalition against Domestic Violence
<http://www.thehotline.org/> - Website for LGBTQ survivors of sexual or domestic violence and minority women survivors of sexual or domestic violence
<http://www.pandys.org/malesurvivors.html> -Website for male survivors
<http://www.rainn.org> – Rape, Abuse and Incest National Network
<http://www.ovv.usdoj.gov/sexassault.html> - Department of Justice
<http://www2.ed.gov/about/offices/list/ocr/index.html> - Department of Education, Office of Civil Rights

XV. 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. Retaliation will result in disciplinary measures, up to and including termination or expulsion.

XVII. Consensual Relationships

Intimate relationships between supervisors and their subordinates and between faculty members and students are strongly discouraged due to the inherent inequality of power in such situations. These relationships could lead to undue favoritism or the perception of undue favoritism, abuse of power, compromised judgment, or impaired objectivity.

Engaging in a consensual relationship with a student over whom the faculty member has either grading, supervisory, or other evaluative authority (i.e., member of dissertation committee, thesis director, etc.) constitutes a conflict of interest. The faculty member must take steps to remove the

conflict by assigning a different supervisor to the student; resigning from the student's academic committees; or by terminating the relationship, at least while the student is in his/her class.

Likewise, it is a conflict of interest for a supervisor to engage in a consensual relationship with a subordinate over whom he/she has evaluative or supervisory authority. The supervisor must take action to resolve the conflict of interest by, for example, assigning another individual to supervise and/or evaluate the subordinate.

XVI. Flow Chart

[Flow Chart - Reporting, Investigation, and Hearing Process](#)

Forms: [Sexual Violence Reporting Form](#)

Revisions: ~~June 5, 2017 (original policy); _____, 2018,~~

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References: Policies 26 Discrimination and Harassment Based on Protected Categories Other Than Sex; 540 Student Disciplinary Rules; T.C.A. §§ 36-3-601; 39-17-315; 49-7-129; 49-7-2207; [49-7-2406](#).