Legal Issues

New Faculty Orientation
August 22, 2017

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University Counsel
Office of the University Counsel

- Our client is MTSU. We represent the legal interests of the institution.

- We assist the administration and you, in your professional capacity.

- If you have questions for the OUC, please first contact your chair or dean.
General Advice

- Be consistent

- Be fair

- Follow policy: [http://www.mtsu.edu/policies/](http://www.mtsu.edu/policies/) A to Z Link under “P”

- Ask questions (as far in advance as possible)
Title IX and VAWA

How to Address Allegations of Sexual Harassment and Sexual Misconduct

Policy 27
How we respond to allegations of sexual misconduct is critical.

To ensure that you respond appropriately:

- Know what constitutes sexual harassment and sexual misconduct;
- Know your reporting responsibility;
- Know how to deal with requests for confidentiality; and
- Know how to report sexual harassment and sexual misconduct.
Title IX

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.
Title IX

Prohibits:
- Discrimination on the basis of sex
- Sexual harassment
- Sexual assault and sexual violence

VAWA also added:
- Stalking
- Dating violence
- Domestic violence
Violation of Title IX

A hostile environment is created when conduct (sexual harassment or sexual violence) is sufficiently serious that it denies or limits a student’s ability to participate in, or benefit from, the institution’s programs.

If a “responsible employee” knows of such conduct, we must respond.
Sexual Harassment

Sexual harassment is a form of sex discrimination prohibited by Title IX.

Sexual harassment is unwelcome conduct of a sexual nature including:
  o sexual advances,
  o requests for sexual favors, and
  o other verbal, nonverbal or physical conduct of a sexual nature.
Examples of Sexual Harassment

- *Quid pro quo* – work or educational benefits in return for sexual favors;
- Suggestive or inappropriate communications, emails, notes, letters, or other written materials displaying objects or pictures which are sexual in nature;
- Sexual innuendoes, comments, and remarks about a person’s clothing, body, or activities;
- Humor and jokes about sex that denigrate men or women;
- Sexual propositions, invitations, or pressure for sexual activity;
- 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;
- Implied or overt sexual threats;
- Suggestive or obscene gestures;
- Patting, pinching, and other inappropriate touching.
Sexual Violence

Physical sexual acts perpetrated against a person’s will or where a person is incapable of giving consent due to the victim’s use of drugs or alcohol.

Sexual violence includes rape, sexual assault, sexual battery, sexual abuse and sexual coercion.

Can occur between people of the same or opposite sex.
Sexual Assault

Nonconsensual sexual contact where the accused knows, or has reason to know, that the victim did not or could not consent.

- Includes accused touching the victim or forced touching of the accused by the victim.

Sexual contact includes, but is not limited to:

- Intentional touching of intimate parts; or
- Intentional touching of the clothing covering the immediate area of intimate parts, if that intentional touching can be reasonably construed as being for the purpose of sexual arousal or gratification.
Stalking

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.

Harassment means conduct directed toward the victim that includes, but is not limited to, repeated or continuing nonconsensual contact that would cause a reasonable person to suffer emotional distress, and that actually causes the victim to suffer emotional distress.

Harassment does not include constitutionally protected activity or conduct that serves a legitimate purpose.
Dating Violence

Violence against someone the accused is dating or has a sexual relationship with or has dated or had a sexual relationship with in the past.

- Does not include fraternization between two individuals solely in a business or non-romantic context.

Violence includes, but is not necessarily limited to:

- Intentionally inflicting, or attempting to inflict, physical injury on the victim;
- Physical restraint;
- Placing the victim in fear of physical harm to victim or victim’s pets; or
- Malicious damage to the victim’s personal property (including pets).
Domestic Violence

Violence against a person when the victim and accused are: current or former spouses; living together or have lived together; related by blood, adoption, or marriage; or children of a person in a relationship described above.

Violence includes, but is not necessarily limited to:

- Intentionally inflicting, or attempting to inflict, physical injury on the victim;
- Physical restraint;
- Placing the victim in fear of physical harm to victim or victim’s pets; or
- Malicious damage to the victim’s personal property (including pets).
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

Consent cannot be given by an individual who is:
- asleep;
- unconscious;
- mentally or physically incapacitated, either through the effects of drugs or alcohol or for any other reason; or
- under duress, threat, coercion, or force.

Consent cannot be given by a minor.
Consent

- Past consent does not imply future consent.
- Silence or an absence of resistance does not imply consent.
- Consent can be withdrawn at any time.
Responsible Employee

- You are a Responsible Employee because faculty are likely to receive reports of sexual misconduct.

- You have a **duty to report** incidents of misconduct.

- If a responsible employee fails to make a required report, he/she is subject to disciplinary action.

- Also, there is the possibility of individual liability if a responsible employee fails to take appropriate action.
When you know, or reasonably should know, about incidents of sexual harassment and sexual misconduct, you **must** report.

Provide all details and facts – names of those involved, date, time, location, etc. – to the Title IX Coordinator.
Reporting

- There is no confidentiality between students and faculty.

- If a student reveals information to you, it is your obligation, as a Responsible Employee, to report all details.

- You do not need to determine whether the alleged sexual harassment or sexual misconduct actually occurred, or that a hostile environment was created, before reporting an incident.
Reporting – Confidentiality

**Before** the student reveals info, tell him/her about:

- Your obligation to report any details shared.

- The student’s option to report to Title IX team for a formal investigation.
  - The student has the option to **request** that MTSU maintain his/her confidentiality.
  - But, in some instances, the Title IX team may not be able to keep information confidential.

- The student’s option to share the info confidentially.

- The student’s option to report to law enforcement.
Title IX Team

- Title IX Coordinator:
  - Marian V. Wilson, Ph.D.
    615–898–2185  marian.wilson@mtsu.edu
  - Investigates complaints involving faculty, staff and visitors.
  - Monitors and oversees Title IX implementation.

- Title IX Deputy Coordinators:
  - Institutional Equity and Compliance
    Christy Sigler, 615–898–2185  christy.sigler@mtsu.edu
  - Athletics
    Diane Turnham, 615–898–2938  diane.turnham@mtsu.edu
  - Students
    Laura Sosh-Lightsy, 615–898–2750  laura.lightsy@mtsu.edu
Reporting – Confidentiality

The student’s option to share the info confidentially

MTSU Sexual Assault Intervention Liaison
Amy.dean@mtsu.edu  615–904–8355

MTSU Counseling Center  615–898–2670
KUC 326 – S

MTSU Student Health Services  615–898–2988
1848 Blue Raider Drive

Domestic Violence and Sexual Assault Center
24 hour crisis line:  615–494–9262
The student’s option to report the incident to law enforcement

MTSU University Police  615–898–2424

Murfreesboro Police  615–893–1311

Rutherford County Sheriff  615–898–7770
Consensual Relationships

- Not prohibited but **strongly discouraged**.

- Inherent inequality of power.

- Undue favoritism or perception of such, abuse of power, compromised judgment or impaired objectivity.

- Conflict of interest if supervises or evaluates. Must report the conflict.
Clery Act

Requires MTSU to:
  o Collect
  o Classify
  o Count

Must compile crime reports and crime statistics. Must keep a daily crime log of incidents that is open to the public.
Clery Act

“Campus Security Authority”

An official of an institution who has significant responsibility for student and campus activities …

YOU!!!!
CSAs must report criminal incidents.

A crime is “reported” when it is brought to the attention of a campus security authority by a victim, witness, other third party or even the offender.
Reportable Offenses

- Criminal homicide
- Rape and sexual assault
- Robbery
- Aggravated assault
- Burglary
- Motor vehicle theft
- Arson
- Arrests and disciplinary referrals for violation of drug, liquor and weapons laws
Hate crimes –
Any or the prior listed offenses; and,
Larceny-theft
Simple assault
Intimidation or destruction/damage/vandalism

….in which an individual or group is intentionally targeted based on actual or perceived race, gender, religion, national origin, sexual orientation, gender identity, ethnicity or disability.
VAWA Offenses

- Stalking
- Sexual Assault
- Domestic Violence
- Dating Violence
CSA Reporting

CSAs are not responsible for determining whether or not a crime took place.

University Police will determine if it’s a Clery Act reportable incident.
Responsible Employee v. CSA

Responsible Employee – reports all details of sexual harassment/sexual misconduct and provides to Title IX Coordinator so we can respond to the incident.

CSA – reports non–personally identifiable details concerning Clery crimes via CSA Worksheet – for statistical purposes.

www.mtsu.edu/police/clery-incident-report.php
Americans with Disabilities Act, as amended

Purpose – to ensure that all individuals have equal access to the benefits of educational programs and activity.

Individuals with disabilities may require reasonable accommodation in order to provide this.
Disability and Access Center (DAC)

www.mtsu.edu/dac/index.php

DAC determines if a student is disabled, if he/she needs accommodation, and if so, what the reasonable accommodation will be.
Disruptive Students
Policy 540

The instructor has the primary responsibility for maintenance of academic integrity and for controlling classroom behavior, and can order the temporary removal or exclusion from the classroom of any student engaged in disruptive conduct or conduct that violates the general MTSU rules and regulations for each class session during which the conduct occurs.
Behavior that unreasonably disrupts the academic environment (e.g. interferes with teaching, classroom operations, research, etc.) or unreasonably interferes with operations, events or programs on institutionally owned or controlled property, or during a University event. This includes the unauthorized use of sirens, loudspeakers, and other sound amplification equipment.
Disruptive Students

Extended or permanent exclusion from the classroom, beyond the session in which the conduct occurred or further disciplinary action, can be effected only through appropriate procedures of the institution. If an instructor wishes to remove a student from the classroom for a longer period of time or permanently, he/she must refer the student to the Office of Student Conduct.
Disruptive Students

- Include in your syllabus behavior that is expected and behavior that may result in a student being removed from class.

- Set the example. Be respectful of students and their right to voice dissenting or opposing viewpoints.

- Balance the responsibility to maintain classroom decorum with the rights of students to express their disagreement with points of view of others.
Disruptive Students

- If the debate or discourse proceeds with some degree of civility and allows the subject matter for the day to proceed, such expressions should not be characterized as disruptive [disorderly].

- Exercise professional judgment in determining when conduct becomes disruptive [disorderly] such that the student may be excluded from the classroom.

- Address the disruption immediately. Ask the student to alter his/her behavior. Tell the student that he/she will be removed if the disruption continues.
Disruptive Students

- If the conduct threatens the safety of others, contact MTSU University Police at 2424.

- If conduct continues, you may direct the student to leave the classroom. If the student refuses, you may want to call MTSU Police.

- Document the incident as soon as possible. Include as much detail as possible.

- Send documentation to department chair.

- If conduct is severe or persists, consider filing a disciplinary complaint.
An institution shall be committed to maintaining a campus as a marketplace of ideas for all students and all faculty in which the free exchange of ideas is not to be suppressed because the ideas put forth are thought by some or even by most members of the institution’s community to be offensive, unwise, immoral, indecent, disagreeable, conservative, liberal, traditional, radical, or wrong-headed.
An institution shall be committed to giving students the broadest possible latitude to speak, write, listen, challenge, learn, and discuss any issue.

However, the speech can be limited to speech reasonably related to a legitimate pedagogical purpose, such as classroom rules enacted by faculty.
“Odd” or “Creepy” Students

Not, in itself, a basis for disciplinary action.

Student Assistance Coordinating Committee
www.mtsu.edu/countest/sacc/index.php
A resource and point of contact concerning students who may be distressed, depressed, disruptive, or otherwise problematic.

Dr. Mary Kaye Anderson, Counseling Services, 615–898–2670
Plagiarism. The adoption or reproduction of ideas, words, statements, images, or works of another person as one's own without proper attribution. This includes self-plagiarism, which occurs when an author submits material or research from a previous academic exercise to satisfy the requirements of another exercise and uses it without proper citation of its reuse.
Academic Misconduct

- **Cheating.** Using or attempting to use unauthorized materials, information, or aids in any academic exercise or test/examination. Cheating includes unapproved collaboration, which occurs when a student works with others on an individual exercise without the express permission of the faculty member.

- **Fabrication.** Unauthorized falsification or invention of any information or citation in an academic exercise.
Academic Misconduct, etc.

May assign an appropriate grade for the academic exercise or exam, or an F in the course, as is proportional to the nature and extent of academic misconduct.

In every case, you must fill out an Academic Misconduct Faculty Referral form.
FERPA Policy 500


- Purpose is to protect the privacy rights of student education records and to ensure the accuracy of those records

- Applies to currently enrolled or formerly enrolled students (regardless of age or parental dependency status)

- Applies to all institutions that receive Department of Education funds
Student Rights Under FERPA

- Right to inspect and review the record (all parts with two exceptions)

- Right to request an amendment to the record that the student believes is inaccurate or misleading or violation of his/her privacy rights (recording error, not a substantive decision) and to request a hearing if request to amend is not granted

- Right to consent to disclosure of personally identifiable information (PII)
Student Rights Under FERPA

- Right to know what institution has designated as public/directory information and the right to request suppression of public/directory information

- Right to know that school officials may access records and the criteria for determining that a school official has a legitimate need to know the information

- Right to file a complaint with the Family Policy Compliance Office in the U.S. Dept. of Education
Most records from which a student can be personally identified and which are maintained by the institution regardless of its form (e.g., handwritten, print, database, disk, email, files, graded materials, class lists, individual student class schedules, financial aid records)
Things that are *not* Education Records

- Information that is not recorded anywhere – only exists in your brain

- “Sole possession” records – only possessed by maker for use as a memory aid.

- Law enforcement records – MTSU police reports naming students

- Employment records – employees who are also students

- Alumni records – records created after student is no longer in attendance
Directory Information May Be Disclosed

- Name
- Address, email address, telephone listing
- Photograph
- Year and place of birth
- Major field of study
- Enrolled hours
- Student level (freshman, sophomore, etc.)
- Participation in officially recognized activities and sports, weight and height of members of athletic teams
- Dates of attendance
- Degrees and dates conferred
- Honors and awards and dates received
- Most recent educational agency or institution attended by the student.
Non-directory Information

Available to an outside party that has the student’s written consent

- Consent must:
  - Have a written signature and be dated;
  - Specify the records to be disclosed;
  - State the purpose of the disclosure; and
  - Identify to whom the disclosure can be made.

- Permissive; do not have to release
- Forward consents to Registrar’s office, they will forward to University Counsel for review
- Registrar will keep a copy of the consent in the education record
Non-directory information

“School officials” with a “legitimate educational interest”

- “School officials”
  - MTSU employees
  - Contractors (with appropriate contractual language)
  - Participants on official committees (i.e., disciplinary committees)
- “Legitimate educational interest” – often referred to as “need to know”
  - Interest in reviewing student education records for the purpose of performing assigned institutional research, educational or administrative function
  - Guiding principle – If you need the data to perform your job duties, you should have access to it.
Parents and FERPA

Parents are considered a “third party” and do not have a right to student information

Refer all parental inquiries to the University College Advising Center/MT One Stop
Health or Safety Exception

This FERPA exception allows the release of student PII to any party determined to be able to assist the student

Can share info with Office of Student Conduct or the Student Assistance Coordinating Committee

Disclosure may be required in your role as a Responsible Employee or Campus Security Authority
Guiding Principles Regarding Student Information

- School officials shall not disclose personally identifiable information about a student nor permit inspection of those records without the student’s written permission unless it is allowed by an exception under FERPA.

- You have a legal responsibility to protect confidentiality of student records.

- Only access what you need to know to do your job.

- Curiosity does not equal a legitimate need to know.
Inadvertent Release of Private Data

Immediately notify your supervisor, the Registrar and University Counsel.

If possible, remove the material from public view.
Communicating With Students

- E-mail should only be sent from a MTSU e-mail account to a MTSU e-mail account or within D2L.

- A student’s e-mail address can be found on GOAEMAL in Banner, on the Class Email List in RaiderNet, or in the online directory.

- All e-mails are considered education records and subject to FERPA regulations.

- Grades can be sent to and from institutional e-mail accounts, including D2L, to individual students.
Communicating With Students

You can use Twitter, Facebook, and other social media to communicate. However, be sure that you are not disclosing PII or any part of a student’s education record.

Be sure that any device you use to communicate with students or to store student data is secure, i.e. your desktop/laptop computers, tablets, smart phones. Password protection is the easiest way to do this. Also remember to protect items like flash drives.
Tennessee Open Records Act

- In contrast to FERPA, state records are open to Tennessee citizens for inspection or copying.

- Covers records made and maintained in the course and scope of business.

- Includes employment records, though not evaluation records.

- FERPA (federal) trumps Open Records law (state).
State Employee Immunity
Personal Liability

State employees are immune from suit for negligent acts or omissions occurring within the course and scope of their employment.

If sued, would be represented by Attorney General’s Office and would not be personally liable for any damages or costs.
Personal Liability

No coverage if act was:

- Unlawful
- Grossly negligent
- Outside scope and course of employment
- Willful, intentional, malicious
- Performed for personal gain
Contracts And Signatory Authority

No authority to bind MTSU to a third party unless it’s been specifically delegated in writing.

May result in personal liability.

MT$ource: contract routing process.

Visit Contract Office website for further information.
Compliance Policies

- Policy 10 Ethics and Code of Conduct
- Policy 12 Conflict of Interest
- Policy 71 Preventing and Reporting Fraud, Waste and Abuse
- Policy 404 Conflict of Interest for Externally Funded Projects
- Policy 814 Outside Employment, Extra Compensation and Dual Services
- Policy 816 Nepotism
Compliance Policies

These policies set out:

- Institutional and Professional Values
- Employment Responsibilities and Expectations
- Conflict of Interest
- Appropriate Use of University Resources
- Professional Development
- Integrity of Information
- Reporting of fraud, waste or abuse
Conflict of Interest

Disclosure required to be reviewed by COI Committee.

Use of educational material from which a faculty member derives financial benefit.

Must disclose intellectual property developed during affiliation with MTSU.
Outside Employment Policy 84

Any outside professional employment or business activity:

- Must not interfere with assigned duties
- Must not be a conflict of interest or compete with MTSU’s programs
- Must not be represented as connected to MTSU

Must be disclosed to determine if there is conflict or interference with duties.
Questions?

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