Legal Issues

New Faculty Orientation
August 21, 2018

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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

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.
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.
Responsible Employee

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
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

Federal law that requires MTSU to:
- Collect
- Classify
- 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
Reportable Offenses

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
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) – students

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

If you have questions about the accommodation, contact the DAC to discuss.
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 not recorded anywhere – only exists in your brain. Includes observations not derived from record.

- “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.
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 may have access to it.
Parents and FERPA

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

Partners in Education program:
http://mtsu.edu/one-stop/docs/PIE-Student-Authorization-Release.pdf

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.
Students have due process rights. Policies that include these: 26, 27, 230, 540

May appear that concerns are not being addressed, or addressed quickly enough or transparently enough.

Can’t share details – FERPA

Safety v. individual rights.
The instructor has the primary responsibility for maintenance of academic integrity and controlling classroom behavior, and can order the temporary removal or exclusion from the classroom of any student engaged in disorderly 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.
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 University. 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.
Disorderly 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.
Disorderly 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 disorderly.

- Exercise professional judgment in determining when conduct becomes 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.
Disorderly Students

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

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

- 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.
Academic Misconduct Policy 312

- **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.
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. (*This will be revised with next revision of the policy.*)

In every case, you must fill out an Academic Misconduct Faculty Referral form.
Students of Concern

Not engaging in prohibited action in violation of Policy 540 but causing concern.

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
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.
No coverage if act was:

- Unlawful
- Grossly negligent
- Outside scope and course of employment
- Willful, intentional, malicious
- Performed for personal gain
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).
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
These policies set out, among other things:

- 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
Office of Compliance and Enterprise Risk Management

Dr. Gené Stephens,
Assistant Vice President

http://www.mtsu.edu/carem/index.php

Info on conflict of interest; ethics; fraud, waste and abuse; training tools; compliance calendar
Disclosures of possible conflicts of interest will be reviewed by COI Committee.

Use of educational material from which a faculty member derives financial benefit. Use of faculty-authored text in his/her class.

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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