

MIDDLE TENNESSEE STATE UNIVERSITY  
POLICIES AND PROCEDURES MANUAL

POLICY NO: I:01:23

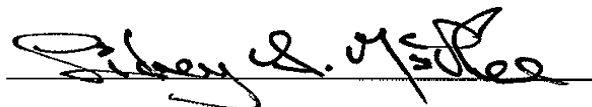
DATE: September 30, 2014

SUPERSEDES POLICY NO: N/A

DATED: N/A

SUBJECT: Sexual Misconduct

APPROVED: Sidney A. McPhee, President



## I. PURPOSE

This policy is adopted by Middle Tennessee State University (“MTSU” or “the University”) specifically to address sexual misconduct which includes the offenses defined herein: dating violence, domestic violence, sexual assault, and stalking; and, to establish procedures for responding to incidents of sexual misconduct. Sexual misconduct is a form of sex discrimination prohibited by Title IX and MTSU. MTSU is committed to eliminating any and all acts of sexual misconduct and discrimination on its campus. Any allegation of sexual misconduct as defined herein will be investigated and adjudicated according to this policy.

All other forms of sex discrimination, including sexual harassment, are also strictly prohibited and are subject to the procedures described in [Tennessee Board of Regents \(“TBR”\) Guideline P-080 Discrimination and Harassment – Complaint and Investigation Procedure](#) as adopted and implemented by [MTSU Policy I:01:22 Discrimination and Harassment – Complaint and Investigation Procedure](#).

MTSU intends to comply fully with Title IX of the Education Amendments of 1972, Section 485(f) of the HEA, as amended by Section 304 of the Violence Against Women Reauthorization Act of 2013, the regulations implementing these Acts found at 34 CFR § 668.41, §668.46, and Appendix A to Subpart D of Part 668.

## II. SCOPE

A. These procedures shall be utilized by:

1. Any employee or student who has been a victim of sexual misconduct, regardless of sexual orientation or gender identity/expression;
2. Any former employee or student who has been a victim of sexual misconduct 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 against another employee or student in order to report such misconduct; and,

4. All third parties with whom MTSU has an educational or business relationship who have been a victim of sexual misconduct when the conduct has a reasonable connection to the institution.
- B. This policy is adopted specifically to address the offenses defined herein.
- C. All other forms of sex discrimination, including sexual harassment, are also strictly prohibited and are subject to the procedures described in [TBR Guideline P-080](#) as adopted and implemented by [MTSU Policy I:01:22 Discrimination and Harassment – Complaint and Investigation Procedure](#).

### III. DEFINITIONS

- A. 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.
- B. Dating Violence ([TENN. CODE ANN. § 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 a victim in fear of physical harm to any animal owned, possessed, leased, kept, or held by the accuser.
- C. Domestic Violence ([TENN. CODE ANN. § 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.
- D. Responsible Employee. An MTSU employee who has the authority to redress sexual misconduct, who has the duty to report incidents of sexual misconduct, or whom a student could reasonably believe has this authority or duty. See Section V.C.2. for additional information on responsible employees.
- E. 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.
- F. Sexual Misconduct. For the purposes of this policy, “sexual misconduct” is defined as dating violence, domestic violence, stalking, and sexual assault.
- G. Stalking ([TENN. CODE ANN. §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.

- H. Title IX Coordinator. The Title IX Coordinator is the MTSU official responsible for overseeing the University's response to sexual misconduct 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. 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 events, 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 or 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 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**

- A. MTSU encourages victims of sexual misconduct 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 C, below, detail the confidentiality options available to individuals.
- B. A student who is under the influence of alcohol or drugs during a sexual misconduct incident should not be reluctant to seek assistance for fear of being sanctioned. The Office of Judicial Affairs and Mediation Services will generally not pursue disciplinary violations against a student (or against a witness) for his or her improper use of alcohol or drugs (e.g. underage drinking) if the student is making a good faith report of sexual misconduct. This practice only applies to amnesty from violations of the MTSU University Code of Conduct. It does not grant amnesty for criminal, civil, or legal consequences for violations of federal, state, or local law.
- C. Reporting confidentially.
  - 1. Reports to 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, Health Services Building, or a provider of their choice.
  - (2) Employees must utilize a healthcare provider of their choice.
  - c. 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 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. Counselors and doctors affiliated with MTSU (e.g., MTSU Counseling 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 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 about an incident of sexual misconduct, the responsible employee must report to the Title IX Coordinator all relevant details about the alleged sexual misconduct.
  - 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 teaching 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 victim 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 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.
    - a. Reporting to University Police (Nottingham Act requirements)
      - (1) Unless the victim of a sexual assault does not consent to the reporting of an offense, the MTSU Police Department shall immediately notify the Murfreesboro Police Department if an 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, the MTSU Police Department and the Murfreesboro Police

Department shall jointly investigate the incident. The MTSU Police Department shall lead the investigation. The Murfreesboro Police Department and MTSU Police Department shall cooperate in every respect in the investigation. [TENN. CODE ANN. § 49-7-129](#).

- (2) 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. [TENN. CODE ANN. § 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 are not considered notice to MTSU of sexual misconduct 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 the 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.
- 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 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;

- (3) Whether the alleged perpetrator threatened further sexual misconduct or other misconduct against the complainant or others;
  - (4) Whether the sexual misconduct was committed by multiple perpetrators;
  - (5) Whether the sexual misconduct 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; 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 is 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.

#### D. 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

220 Cope Administration Building

1301 East Main Street

Murfreesboro, TN 37132

(615) 898-2185

[marian.wilson@mtsu.edu](mailto:marian.wilson@mtsu.edu)

##### Title IX Deputy Coordinators

Laura Sosh-Lightsy

Assistant Dean, Judicial Affairs and Mediation Services

208 Keathley University Center

1301 East Main Street

Murfreesboro, TN 37132  
(615) 898-2750  
[laura.lightsey@mtsu.edu](mailto:laura.lightsey@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](mailto:diane.turnham@mtsu.edu)

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.

- E. Inquiries or complaints concerning Title IX also may be referred to the United States Department of Education:

United States 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](mailto: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 harassment, discrimination, and sexual misconduct. 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;
  5. Coordination and oversight of training for employees related to their responsibility when they are aware of sexual misconduct;

6. Coordination and oversight of annual training for investigators, decision makers, hearing officers and hearing committee members on the issues related to sexual misconduct 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.
- 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. All proceedings will include a prompt, fair, and impartial investigation and result. The University will provide the respondent and complainant equitable rights during the investigative process.
- B. All complaints of sexual misconduct 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 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 (hereinafter referenced as “the 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 documents shall be attorney work product.
- E. The Investigator shall also notify the President and any appropriate coordinator (i.e., Title VI or ADA/Section 504) that an investigation is being initiated.
- F. Mediation between the complainant and respondent will never be considered an appropriate resolution in sexual assault cases.
- G. Initiating an investigation
  1. Absent good cause, within three (3) business days of receipt of a report of sexual misconduct, 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.
  2. 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, 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. 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 Human Resource Services will determine if the facts warrant the appointment of a different investigator and respond to the party in writing within three (3) business days, absent good cause. The decision of the Assistant Vice President for Human Resource Services shall be final.

H. What the investigation should and should not entail:

1. Once the Investigator receives the complaint, the Investigator shall notify the complainant in writing of his/her rights and request a meeting.
2. The Investigator shall also notify the respondent in writing of the complaint and his/her rights and request a meeting with the respondent.
3. The Investigator shall notify the complainant, respondent and all individuals interviewed during the investigation that retaliation is strictly prohibited and may be grounds for disciplinary action. In addition, the Investigator shall advise all interviewees that they should contact the Investigator immediately if they believe they are being retaliated against.
4. The investigation shall include interviews with both the complainant and respondent, unless either declines an in-person interview.
5. The complainant and respondent shall be provided with the same opportunities to have others present during an interview, including the opportunity to be accompanied by the advisor of their choice to any related meeting or proceeding.

6. The University will not limit the choice of advisor for either the complainant or respondent; however, advisors will be limited to an advising role only and may not otherwise participate in the proceedings.
7. The investigation shall include interviews with relevant witnesses identified by the complainant and respondent and any other potential, relevant witness made known to the investigator via other means.
8. The investigation shall include the gathering and reviewing of any documentary, electronic, physical, or other type of relevant evidence.
9. The Investigator is expected to request a list of relevant witnesses and evidence from the complainant and respondent and take such into consideration.
10. The Investigator shall not consider any evidence about the complainant's prior sexual conduct with anyone other than the respondent. Evidence of a prior consensual dating or sexual relationship between the parties by itself does not imply consent or preclude a finding of sexual misconduct.

## **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.
- B. It is the responsibility of the Investigator to weigh the credibility of all individuals interviewed and to determine the weight to be given to information received during the course of the investigation.
- C. After review and comment by the OUC and Title IX Coordinator, the report shall be delivered by the Investigator to the President.
- D. After review of the report and in consultation with the OUC, the President shall make a determination based on a preponderance of the evidence presented as to whether or not a violation of this policy occurred.
- E. The President's determination shall be communicated in writing simultaneously to the complainant and respondent, along with notice to the parties of their right to request an institutional hearing on the determination that a policy violation did or did not occur.

## **IX. TIMEFRAME FOR CONDUCTING THE INVESTIGATION**

- A. 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 President, and that the Investigator will notify the parties in writing of President's determination. This timeframe does not include a hearing; see Section XI. Institutional Hearing.

- B. If the Investigator or President 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.
- C. 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.
- D. 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.

## **X. INSTITUTIONAL HEARING**

- A. If either the complainant or the respondent is aggrieved by the President's determination, that party may request an institutional hearing on the determination that a policy violation did or did not occur by providing written notice of the request to the Investigator within ten (10) business days of receipt of the President's decision.
- B. If a request is not received within ten (10) business days, the President's determination is final.
- C. The hearing may be held before either a hearing officer or hearing committee. The President shall determine whether to proceed with a hearing officer or hearing committee and shall appoint individuals to serve in those capacities. The hearing officer and all 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.
- D. 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 Human Resource Services. 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 Human Resource Services, 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 Human Resource Services shall be final.
- E. If such a hearing is requested, every reasonable effort shall be made to conclude the hearing and resolve the appeal, including any appeal to the President, within thirty (30) days following receipt of the complainant's or respondent's request for a hearing.
- F. The complainant and respondent may not engage in formal discovery.

- G. The complainant and the respondent are entitled to have an advisor of choice available; however, the advisor may not participate in the proceeding other than to render advice to the complainant or respondent.
- H. The University will not limit the choice of advisor for either the complainant or respondent.
- I. The complainant and respondent shall be timely notified in writing of all meetings relevant to the proceeding.
- J. The hearing officer or chair of the hearing committee shall control the procedures of the hearing with due consideration given to the complainant 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. 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.
- K. The hearing officer/committee shall use a preponderance of the evidence standard when reaching a decision.
- L. Absent good cause, within five (5) business days of the close of evidence, the hearing officer/committee shall issue a written determination as to whether or not a violation of this policy occurred and the justification for this decision.
- M. The complainant and respondent shall be simultaneously notified of the hearing officer/committee's decision in writing, which shall include notice of their rights to appeal the hearing officer's/hearing committee's determination to the President.

## **XI. APPEAL OF HEARING DECISION TO THE PRESIDENT**

- A. If either the complainant or respondent is dissatisfied with the hearing officer/committee's decision, that decision may be appealed to the President by notifying the Title IX Coordinator in writing of the decision to appeal within five (5) business days of receipt of the hearing officer's/committee's determination.
- B. If a written request for appeal is not received within five (5) days, the decision of the hearing officer/committee 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 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.

## **XII. 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 a determination 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 Judicial Affairs and Mediation Services. If the respondent is a staff member, the matter shall be referred to the Assistant Vice President, Human Resource Services. If the respondent is a faculty member, the matter will be referred to the Provost's Office.
- C. If the respondent is a student, the University will follow the procedures for disciplining students as described in [TBR Policy 3:02:00:01](#) and [MTSU Policy III:00:03 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 shall receive sufficient notice of and be allowed to attend any hearing or other proceeding during the disciplinary process.
  2. The complainant shall be allowed to have an advisor of her/his choice attend any hearing or other proceeding during the disciplinary process.
  3. The complainant 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 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 complainant's contact person for any questions or assistance during the disciplinary process.
  6. The complainant shall receive written notice of the outcome of the disciplinary process.

## **XIII. 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. Providing an escort to ensure that the complainant can move safely between classes/work and activities;
  2. Ensuring that the complainant and respondent do not attend the same classes;
  3. Moving the complainant or respondent to a different residence hall or different work spaces;
  4. Providing access to counseling services;
  5. Providing or assisting in providing medical services;
  6. Providing academic support services, such as tutoring; and
  7. Arranging for the complainant to re-take a course or withdraw from a class without penalty, including ensuring that any changes do not adversely affect the complainant's academic record.
- B. Interim measures may be applied to one, 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 [TBR Policy 3:02:00:01](#) and [MTSU Policy III:00:03 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.

#### **XIV. EDUCATION AND PREVENTION PROGRAMS**

- A. MTSU will engage in comprehensive educational programming to prevent sexual misconduct. 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:
1. Identifies domestic violence, dating violence, sexual assault and stalking as prohibited conduct;
  2. Defines what behavior constitutes domestic violence, dating violence, sexual assault and stalking;
  3. Defines what behavior and actions constitute consent to sexual activity in the State of Tennessee;
  4. 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 and stalking against a person other than the bystander; and

5. Provides information on risk reduction so that students and employees may recognize warning signs of abusive behavior and how to avoid potential attacks.

## **XV. ASSISTANCE FOR VICTIMS OF SEXUAL MISCONDUCT: RIGHTS AND OPTIONS**

Regardless of whether a victim elects to pursue a criminal complaint, MTSU will assist victims of sexual misconduct 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, 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 may be available through <http://www.tncourts.gov/programs/self-help-center/forms/order-protection-forms> and additional information related to such orders may be found at <http://tncoalition.org/resources/legal-resources.html>.
- 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.

## **XVI. RESOURCES FOR VICTIMS OF SEXUAL MISCONDUCT**

- 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 VI.B. above related to the limits on the College's ability to maintain confidentiality.
- B. Information concerning sexual violence is available at: <http://www.mtsu.edu/sexual-violence/>.
- C. On Campus Resources

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. 220 Cope Administration Bldg. (615) 898-2185 <a href="mailto:Marian.wilson@mtsu.edu">Marian.wilson@mtsu.edu</a>
MTSU Student Affairs	Keathley University Center #212 (615) 898-2440 <a href="mailto:stuaff@mtsu.edu">stuaff@mtsu.edu</a>

#### 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)	<a href="http://www.tncourts.gov/programs/self-help-center/forms/order-protection-forms">www.tncourts.gov/programs/self-help-center/forms/order-protection-forms</a>
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.ovw.usdoj.gov/sexassault.html> - Department of Justice

<http://www2.ed.gov/about/offices/list/ocr/index.html> Department of Education, Office of Civil Rights

## XVII. 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.

**Revisions: September 30, 2014 (original).**

***Cross References: Title IX of the Education Amendments of 1972, Section 485(f) of the HEA, as amended by Section 304 of the Violence Against Women Reauthorization Act of 2013; 34 CFR § 668.41, § 668.46, and Appendix A to Subpart D of Part 668; TBR Guideline P-080 Discrimination and Harassment-Complaint and Investigation Procedure; TBR Policy 3:02:00:01 General Regulations on Student Conduct and Disciplinary Sanctions; MTSU Policy I:01:22 Discrimination***

*and Harassment – Complaint and Investigation Procedure; MTSU Policy III:00:03 Student Disciplinary Policies.*