Title IX:
Sexual Discrimination, Sexual Harassment & Sexual Violence

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- 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

SEXUAL HARASSMENT

SEXUAL VIOLENCE
Title IX

Title IX of the Educational Amendments of 1972 (20 USC Sec 1681, et. seq.) and its implementing regulations (34 CFR Part 106) prohibit discrimination on the basis of sex in education programs or activities operated by recipients of Federal financial assistance.

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

- TBR Policy 2:02:10:01 *Sex Discrimination and Sexual Harassment*
- TBR Guideline P–080 *Discrimination & Harassment – Complaint & Investigation Process*
- MTSU Policy I:01:10 *Equal Opportunity, Affirmative Action and Nondiscrimination*
- MTSU Policy I:01:22 *Discrimination and Harassment*
There are other forms of discrimination and harassment which are prohibited and which apply to employees as well as students:

- race, color, religion, creed, ethnic or national origin, sex, sexual orientation/gender identity, disability, age, status as a covered veteran, genetic information

Incidents of these must also be reported.
Sexual harassment is a form of sex discrimination prohibited by Title IX.

Sexual harassment is unwelcome conduct of a sexual nature including

- sexual advances,
- requests for sexual favors, and
- 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.
Not every act that might be offensive is harassing.

Could be found to be unprofessional.

Harassment does not include verbal expressions or written material that is relevant and appropriately related to course subject matter or curriculum.
Hostile Environment

Sexual harassment of a student creates a hostile environment if the conduct is sufficiently serious that it denies or limits a student’s ability to participate in or benefit from the institution’s programs.

This is usually a number of events, but a single incident of sexual harassment, such as rape, can create a hostile environment.
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 and sexual coercion.
Prohibited Acts

Examples:

- Date rape
- Engaging in sexual contact after the victim has said “No.”
- Sexual intercourse or sexual contact when the person is drunk or under the influence of drugs

Can be committed against a girlfriend or spouse
“Sexual battery” – unlawful sexual contact with a victim
  – by force or coercion; or
  – accomplished without consent and the accused
    knows or has reason to know the victim did not
    consent; or
  – the accused knows or has reason to know the
    victim is physically helpless; or
  – the sexual contact is accomplished by fraud

“Sexual contact” includes the intentional touching of the
victim’s, the accused’s, or any other person’s intimate
parts, or the intentional touching of the clothing
covering the immediate area of...intimate parts for
sexual arousal or gratification
Incidents and Effects of Sexual Assault

- Nearly 20% of female students in college will be victims of attempted or actual sexual assault, as will 6% of undergraduate men.
- In 2009, there were nearly 3,300 forcible sex offenses.
- Victims of sexual assault are more likely to suffer academically and from depression, post–traumatic stress disorder, to abuse alcohol and drugs, and to contemplate suicide.
MTSU Must:

- Educate
- Train
- Prevent
- Provide Services
- Provide Remedies
Scope

Touches **all** aspects of an institution’s education program and activities:

- Academic
- Extracurricular
- Athletic
- Programs or activities on **or off** campus.
Institutional Duties

If an institution *knows or reasonably should have known* about sexual harassment that creates a hostile environment, Title IX requires it to:

- Take **immediate** action to eliminate the harassment;
- Prevent its recurrence;
- Address its effects.
Consequences of Noncompliance

- Adversely affects the health, safety, welfare and educational opportunities of students

- Regulatory consequences:
  - Office of Civil Rights investigations
  - Department of Justice lawsuits
  - Loss of Title IV Federal funding

- Individual Liability
Complaint Process and Investigation
MUST IMMEDIATELY REPORT

Doesn’t matter if the student hasn’t complained.

Doesn’t matter if complaint is verbal or written, “formal” or “informal.”
Notice of Complaint

Doesn’t matter if information comes to you secondhand.

Doesn’t matter if the student asks you not to take action.

Doesn’t matter if the student doesn’t identify the conduct as “harassment.”
Reporting

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Investigation

Investigations must be promptly undertaken, equitable, impartial and thorough.

Must be completed within stated timeframe.

Meet with both Complainant and Respondent.

Allow both to offer names of witnesses and evidence.
Institutions have an independent obligation to investigate and take action regardless of the existence of a concurrent criminal investigation or prosecution. May minimally delay investigation, but Complainant must be notified and any needed interim steps must be taken. Complainants must be told of the right to file a criminal complaint.
Interim Steps

Retaliation – at any stage – is strictly prohibited.

Burden to Complainant must be minimized.

Complainant must be told of options to avoid contact with the respondent.

Implementation of “No Contact” orders
The President will make a determination concerning whether the policy has been violated and what response is appropriate.

Both parties have the right to appeal the President’s decision and will be notified in writing of the outcome and their appeal rights.
Remedies

- Providing security escorts
- Ensuring parties don’t have the same class
- Assigning to different residence halls
- Providing counseling services
- Providing medical services
Remedies

- Providing academic support services such as tutoring.
- Arranging for the Complainant to retake or withdraw from a course without penalty.
- Arranging for the Complainant to do independent study or online study to complete a course.
Steps to Prevent Recurrence and Correct Discriminatory Effects

Preventive education programs

Training

Campus climate that encourages reporting

Development and distribution of sexual violence materials
MTSU Will:

Educate campus community on:
- What constitutes sexual harassment
- How and where to report
- What to expect after making a report

Investigate reports promptly

Take appropriate action against those who violate the policy against sexual harassment and/or retaliation
MTSU Will:

- Take interim and permanent steps to stop harassing conduct and remedy its effects
- Prevent the recurrence of harassment
- Minimize the burden to the Complainant’s educational program
- Provide resources and services to Complainants
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.
Questions?

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