



# **Middle Tennessee State University Board of Trustees Audit and Compliance Committee**

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Tuesday, August 18, 2020  
11:00 a.m.

MEC Meeting Room – 2<sup>nd</sup> Floor  
Miller Education Center  
503 East Bell Street  
Murfreesboro, Tennessee 37132





**Middle Tennessee State University  
Board of Trustees**

**Audit and Compliance Committee**

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Tuesday, August 18, 2020  
11:00 a.m.

**AGENDA**

Call to Order and Opening Remarks

Roll Call

Approval of Minutes (Action) .....Tab 1

Title IX Compliance: Rule 0240-07-06 and Policy 29 (Action).....Tab 2

Annual Report for Audit and Consulting Services (Approval).....Tab 3

Compliance and Enterprise Risk Management Update (Information)

1. Compliance and ERM Program Updates and Effectiveness.....Tab 4
2. Annual Compliance Trainings Effectiveness – FERPA, Ethics, and HIPAA .....Tab 5
3. DOJ Evaluation of Corporate Compliance Programs – 2020 Update.....Tab 6

Non-Public Executive Session – Discussion of Risk Assessments (Confidential  
Materials) and Audits/Investigations (Information)

Adjourn Non-Public Executive Session

Public Session – Risk Assessment Reporting (Action) .....Tab 7

Closing Remarks

Adjourn Public Session





**Middle Tennessee State University  
Board of Trustees**

**Audit and Compliance Committee**

**Action Item**

DATE: August 18, 2020

SUBJECT: **Approval of Minutes**

PRESENTER: Pete DeLay  
Committee Chair

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**BACKGROUND INFORMATION:**

The Audit and Compliance Committee met on June 2, 2020. Minutes from the meeting are provided for review and approval.



**MIDDLE TENNESSEE STATE UNIVERSITY  
BOARD OF TRUSTEES**

**AUDIT AND COMPLIANCE COMMITTEE  
MINUTES**

The Audit and Compliance Committee met on Tuesday, June 2, 2020 via electronic teleconference.

**Call to Order and Opening Remarks**

Committee Chair Pete DeLay called the meeting to order at 9:39 a.m.

**Roll Call and Statement of Necessity**

Since the Committee was participating electronically, Heidi Zimmerman, University Counsel and Board Secretary, stated that there were two questions that needed to be answered. Question 1.) Can you hear Ms. Zimmerman and others clearly? Question 2.) Are there others in the room with you? Ms. Zimmerman stated that unless the trustee stated otherwise as their names were called, she would assume that there was no one else present in the room and that the Committee members could clearly hear others on the electronic teleconference.

Committee members Tom Boyd, Pete DeLay, Christine Karbowski, Mary Martin, Steve Smith, and Pam Wright were in attendance by way of electronic teleconference and confirmed no one else was present in the room. All indicated they could hear all others on the electronic teleconference clearly.

Also present on the electronic teleconference were Trustees J.B. Baker, Darrell Freeman Sr., Joey Jacobs, and Samantha Eisenberg. President Sidney McPhee; Alan Thomas, Vice President for Business and Finance; Mark Byrnes, University Provost; Joe Bales, Vice President for University Advancement; Andrew Oppmann, Vice President for Marketing and Communications; Bruce Petryshak, Vice President for Information Technology and Chief Information Officer; Deb Sells, Vice President for Student Affairs and Vice Provost for Enrollment and Academic Services; Brenda

Burkhart, Chief Audit Executive; Heidi Zimmerman, University Counsel and Board Secretary; and, Kim Edgar, Assistant to the President and Chief of Staff were also in attendance.

Ms. Zimmerman stated that a quorum was not physically present, but that one would exist with the inclusion of the Committee members participating electronically. In accordance with T.C.A. § 8-44-108(b)(2), in order to proceed without a physical quorum, the Committee was required to make a determination that necessity for the meeting existed. Ms. Zimmerman provided the following circumstances for the Committee's consideration to establish the necessity for holding the meeting:

1. The agenda included matters the Committee may consider and vote on in order to make recommendations to the Board of Trustees. These recommendations include several informational and follow up items to be shared with the Committee members, including results of external reviews and quarterly reports.
2. The Board of Trustees will meet on Tuesday, June 16.
3. It was necessary for the Committee to meet in order to consider these matters prior to the Board's next meeting.
4. Due to concerns related to exposure to the coronavirus, it was determined that the Committee meeting should be held electronically and, thus, there was not a physical quorum without electronic participation of Committee members.

Chairman Delay requested a motion and a roll call vote be taken for determination on the necessity of holding the meeting. Trustee Karbowiak made the motion, which was seconded by Trustee Smith. A roll call vote was taken and with all Committee members voting "Aye", the motion establishing the necessity of holding the meeting carried.



### **Approval of Minutes - Action**

The first agenda item was approval of the minutes from the March 17, 2020 Audit and Compliance Committee meeting. Trustee Wright moved to approve the minutes from the March 17, 2020 meeting and Trustee Martin seconded the motion. A roll call vote was taken and, with all Committee members voting "Aye," the motion to approve the minutes from the March 17, 2020 meeting of the Audit and Compliance Committee carried.

### **Results of External Reviews - Information**

Ms. Burkhart presented the results of three external reviews. The Office of the Comptroller of the Treasury issued the financial and compliance audit report for the year ended June 30, 2019 on March 11, 2020. The report included unmodified opinions on the fairness of the presentation of the financial statements and contained no audit findings. The Office of Criminal Justice Programs of the Tennessee Department of Finance and Administration completed an on-site, current year review of the STOP (*Services, Training, Officers, Prosecutions*) Contract for the Law Enforcement Domestic Violence/Sexual Assault Investigator position in February 2020 and reported no findings of noncompliance. The National Science Foundation (NSF) reported the results of a desk review by Atlas Research in April 2020 that concluded no major deficiencies but cited five concerns described as "minor". The report included five recommendations for improving the documentation of procedures, noting that proper procedures were in place but the documentation of the processes should be improved. Management is taking corrective action to improve the documentation of procedures which will be reviewed during subsequent monitoring activities.

Ms. Burkhart also provided the following information as a follow-up to the Comptroller's Investigative Report issued in July of 2019 concerning the Office of International Affairs. The former international recruiter pled guilty to two (2) counts of attempted forgery and one (1) count of attempted official misconduct on Friday, May 22, 2020. The former international recruiter received three (3) years of probation with the requirement to complete 100 hours

of community service work. He paid restitution of \$40,000 to the University and is to have no contact with the university campus.

**Quarterly Report – Results of Internal Audit Reports – Information**

Since the March 17, 2020 report of audit results to the Audit and Compliance Committee, no internal audit reports have been issued. The current status of the Internal Audit Plan for Fiscal Year Ended June 30, 2020 was included for the Committee’s review.

**Adjournment**

The Committee adjourned the public session at 9:47 a.m. There were no non-public executive items for discussion.

Respectfully submitted,  
Audit and Compliance Committee



**Middle Tennessee State University  
Board of Trustees**

**Audit and Compliance Committee**

**Action Item**

DATE: August 18, 2020

SUBJECT: **Title IX Compliance  
Rule 0240-07-06  
Policy 29**

PRESENTER: Jeff Farrar, Associate University  
Counsel  
Marian V. Wilson, Assistant to the  
President Institutional Equity

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**BACKGROUND INFORMATION:**

New Rule 0240-07-06 Title IX Compliance and new Policy 29 Title IX Compliance were drafted to comply with revisions to the federal Title IX regulations from the U.S. Department of Education, 34 C.F.R. Part 106. The rule and policy have been prepared and reviewed by a working group consisting of representatives from Student Affairs, Institutional Equity & Compliance, Compliance and Enterprise Risk Management, the Provost's Office, and the Office of the University Counsel.

A rulemaking hearing is scheduled for the Board of Trustees meeting on September 15, 2020.



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Division of Publications**

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# Notice of Rulemaking Hearing

Hearings will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, T.C.A. § 4-5-204. For questions and copies of the notice, contact the person listed below.

<b>Agency/Board/Commission:</b>	Middle Tennessee State University
<b>Division:</b>	
<b>Contact Person:</b>	Heidi Zimmerman, University Counsel
<b>Address:</b>	1301 E. Main Street, CAB 209, Murfreesboro, TN 37132
<b>Phone:</b>	615-898-2025
<b>Email:</b>	<a href="mailto:Heidi.zimmerman@mtsu.edu">Heidi.zimmerman@mtsu.edu</a>

Any Individuals with disabilities who wish to participate in these proceedings (to review these filings) and may require aid to facilitate such participation should contact the following at least 10 days prior to the hearing:

<b>ADA Contact:</b>	Lance Alexis, Director of ADA Compliance
<b>Address:</b>	1301 E. Main Street, 116 Cope Administration Building, Murfreesboro 37132
<b>Phone:</b>	615-898-2125
<b>Email:</b>	<a href="mailto:Lance.alexis@mtsu.edu">Lance.alexis@mtsu.edu</a>

**Hearing Location(s)** (for additional locations, copy and paste table)

Address 1:	Miller Education Center, MEC Meeting Room		
Address 2:	503 E. Bell Street		
City:	Murfreesboro		
Zip:	37130		
Hearing Date:	09/15/2020		
Hearing Time:	1:00 pm	<u>    </u> CST/CDT <u>    </u>	

**Additional Hearing Information:**

MTSU reserves the right to conduct this hearing electronically if it determines that such is necessary as a result of the ongoing COVID-19 pandemic. Information required to access and participate in this meeting electronically will be available at <https://www.mtsu.edu/boardoftrustees/index.php> in advance of the meeting. Interested parties may also submit written comments and questions for consideration at the hearing by emailing same to [heidi.zimmerman@mtsu.edu](mailto:heidi.zimmerman@mtsu.edu).

**Revision Type (check all that apply):**

- Amendment  
 New  
 Repeal

**Rule(s)** (ALL chapters and rules contained in filing must be listed. If needed, copy and paste additional tables to accommodate more than one chapter. Please enter only **ONE** Rule Number/Rule Title per row.)

Chapter Number	Chapter Title
0240-07-06	Title IX Compliance

<b>Rule Number</b>	<b>Rule Title</b>
0240-07-06-.01	Definitions
0240-07-06-.02	Statement of Nondiscrimination on the Basis of Sex
0240-07-06-.03	Notification and Publication Requirements
0240-07-06-.04	General Provisions Related to Reporting Title IX Complaints
0240-07-06-.05	MTSU's Response to Complaints of Sex Discrimination
0240-07-06-.06	MTSU's Response to Complaints of Sexual Harassment
0240-07-06-.07	Confidentiality
0240-07-06-.08	Written Notice to the Parties Upon MTSU's Receipt of a Formal Complaint
0240-07-06-.09	Investigations of Formal Complaints
0240-07-06-.10	Grievance Process for Formal Complaints—General Provisions
0240-07-06-.11	Specific Provisions Related to Conducting a Hearing of Formal Complaints
0240-07-06-.12	Determination Regarding Responsibility
0240-07-06-.13	Appeal of Determination of Responsibility or Dismissal of Formal Complaint
0240-07-06-.14	Informal Resolution Process
0240-07-06-.15	Retaliation
0240-07-06-.16	Training Related to Sexual Harassment Issues
0240-07-06-.17	Effect of Other Requirements
0240-07-06-.18	Record Retention and Disposition
0240-07-06-.19	Severability

Rules of  
Middle Tennessee State University

Chapter 0240-07-06  
Title IX Compliance

New Chapter

Table of Contents is added to Chapter 0240-07-06 Title IX Compliance and shall read as follows:

0240-07-06-.01 Definitions  
0240-07-06-.02 Statement of Nondiscrimination on the Basis of Sex  
0240-07-06-.03 Notification and Publication Requirements General Provisions  
0240-07-06-.04 General Provisions Related to Reporting Title IX Complaints  
0240-07-06-.05 MTSU's Response to Complaints of Sex Discrimination  
0240-07-06-.06 MTSU's Response to Complaints of Sexual Harassment  
0240-07-06-.07 Confidentiality  
0240-07-06-.08 Written Notice to the Parties Upon MTSU's Receipt of a Formal Complaint  
0240-07-06-.09 Investigations of Formal Complaints  
0240-07-06-.10 Grievance Process for Formal Complaints—General Provisions  
0240-07-06-.11 Specific Provisions Related to Conducting a Hearing of Formal Complaints  
0240-07-06-.12 Determination Regarding Responsibility  
0240-07-06-.13 Appeal of Determination of Responsibility or Dismissal of Formal Complaint  
0240-07-06-.14 Informal Resolution Process  
0240-07-06-.15 Retaliation  
0240-07-06-.16 Training Related to Sexual Harassment Issues  
0240-07-06-.17 Effect of Other Requirements  
0240-07-06-.18 Record Retention and Disposition  
0240-07-06-.19 Severability

0240-07-06-.01 Definitions is added to Chapter 0240-07-06 Title IX Compliance and shall read as follows:

0240-07-06-.01 Definitions

- (1) Actual knowledge: notice of sexual harassment or allegations of sexual harassment to MTSU's Title IX Coordinator or any MTSU official who has authority to institute corrective measures on behalf of MTSU. This definition is not met when the only MTSU official with actual knowledge is also the respondent.
- (2) Complainant: an individual who is alleged to be the victim of conduct that could constitute sexual harassment. Complainant does not mean the Title IX Coordinator when the Title IX Coordinator signs a formal complaint or is not otherwise an alleged victim of sexual harassment. References in this rule to the singular "complainant" include the plural, as applicable.
- (3) Deliberately indifferent: a response that is clearly unreasonable in light of the known circumstances.
- (4) Education program or activity: locations, events, or circumstances over which MTSU exercised substantial control over both the respondent and the context in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by MTSU.
- (5) Formal complaint: a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting MTSU investigate the allegation of sexual harassment. As used in this definition, the phrase "document filed by a complainant" means a document or electronic submission that contains the complainant's physical or digital signature, or otherwise indicates that the complainant is the person filing the formal complaint.
- (6) Hearing officer: the person who is the decision-maker with respect to the determination of responsibility after a live hearing. Hearing officer may also mean a committee that is the decision-maker with respect to the determination of responsibility after a live hearing. A hearing officer cannot be the same person(s) as the Title IX Coordinator or the investigator(s).

- (7) Party: either complainant or respondent. References in this rule to the plural “parties” includes complainant and respondent.
- (8) Respondent: an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment. References in this rule to the singular “respondent” include the plural, as applicable.
- (9) Sexual harassment: conduct on the basis of sex that satisfies one (1) or more of the following:
  - (a) A MTSU employee conditioning the provision of an aid, benefit, or service of MTSU on an individual’s participation in unwelcome sexual conduct;
  - (b) Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to MTSU’s education program or activity; or
  - (c) Sexual assault as defined by federal law, “dating violence” as defined by federal law, “domestic violence” as defined by federal or state law, or “stalking” as defined by federal law.
- (10) Supportive measures: non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures are designed to restore or preserve equal access to MTSU’s education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or MTSU’s educational environment, or deter sexual harassment. Supportive measures may include but are not limited to counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures.
- (11) Title IX Coordinator: the person designated and authorized by MTSU to coordinate its efforts to comply with its Title IX responsibilities.

Authority: T.C.A. §§ 49-8-101(a)(2)(A) and 49-8-203(a)(1)(D) & 49-8-203(a)(4).

0240-07-06-.02 Statement of Nondiscrimination on the Basis of Sex is added to Chapter 0240-07-06 Title IX Compliance and shall read as follows:

0240-07-06-.02 Statement of Nondiscrimination on the Basis of Sex

- (1) As required by law, no student, employee, or applicant for admission or employment will be excluded, on the basis of sex, from participation in, be denied the benefit of, or be subjected to discrimination in any MTSU education program or activity.
- (2) If MTSU has actual knowledge of sexual harassment in an education program or activity against a person, MTSU will respond promptly in a manner that is not deliberately indifferent.

Authority: T.C.A. §§ 49-8-101(a)(2)(A) and 49-8-203(a)(1)(D) & 49-8-203(a)(4).

0240-07-06-.03 Notification and Publication Requirements is added to Chapter 0240-07-06 Title IX Compliance and shall read as follows:

0240-07-06-.03 Notification and Publication Requirements

- (1) MTSU will notify applicants for admission and employment, students, and employees, that it does not discriminate on the basis of sex in its education programs or activities and will provide the name, title, office address, electronic mail address, and telephone number of the Title IX Coordinator in that notification.
- (2) MTSU will notify applicants for admission and employment, students, and employees that inquiries about the application of Title IX may be referred to the Title IX Coordinator, to the Department of Education, or both.



- (3) MTSU will provide applicants for admission and employment, students, and employees notice of its grievance process, including how to report or file a complaint of sex discrimination, how to report or file a formal complaint of sexual harassment, and how MTSU will respond.
- (4) MTSU will prominently display the contact information for the Title IX Coordinator, its Title IX policies and procedures, and training materials as required by Title IX on its website and in each handbook or catalog that it makes available to applicants for admission and employment, students, and employees.

Authority: T.C.A. §§ 49-8-101(a)(2)(A) and 49-8-203(a)(1)(D) & 49-8-203(a)(4).

0240-07-06-.04 General Provisions Related to Reporting Title IX Complaints is added to Chapter 0240-07-06 Title IX Compliance and shall read as follows:

#### 0240-07-06-.04 General Provisions Related to Reporting Title IX Complaints

- (1) Any person may report sex discrimination, including sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment), in person, by mail, by telephone, or by electronic mail, using the contact information listed for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report.
- (2) Such a report may be made at any time (including during non-business hours) by using the telephone number or electronic mail address, or by mail to the office address listed for the Title IX Coordinator.
- (3) A complainant may file a formal complaint with the Title IX Coordinator in person, by mail, or by electronic mail, using the contact information listed for the Title IX Coordinator or by any additional method MTSU designates. At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in a MTSU education program or activity.

Authority: T.C.A. §§ 49-8-101(a)(2)(A) and 49-8-203(a)(1)(D) & 49-8-203(a)(4).

0240-07-06-.05 MTSU's Response to Complaints of Sex Discrimination is added to Chapter 0240-07-06 Title IX Compliance and shall read as follows:

#### 0240-07-06-.05 MTSU's Response to Complaints of Sex Discrimination

- (1) When a person reports sex discrimination committed against a person while in the United States, MTSU will follow its rules, procedures, and processes used for sex discrimination allegations, which provide for the prompt and equitable resolution of complaints alleging sex discrimination.
- (2) Where a person alleges both sex discrimination and sexual harassment committed against a person while in the United States, MTSU will follow its rules, procedures, and processes for responding to a formal complaint of sexual harassment. If the formal complaint is dismissed at any point in the process, MTSU will follow its rules, procedures, and processes used for sex discrimination allegations.

Authority: T.C.A. §§ 49-8-101(a)(2)(A) and 49-8-203(a)(1)(D) & 49-8-203(a)(4).

0240-07-06-.06 MTSU's Response to Complaints of Sexual Harassment is added to Chapter 0240-07-06 Title IX Compliance and shall read as follows:

#### 0240-07-06-.06 MTSU's Response to Complaints of Sexual Harassment

- (1) If MTSU has actual knowledge of sexual harassment in an education program or activity committed against a person while in the United States, MTSU will respond promptly in a manner that is not deliberately indifferent and follow its grievance process.
- (2) MTSU will treat complainants and respondents equitably by offering supportive measures to a complainant, and in cases where a formal complaint is filed, will follow its grievance process before the imposition of any disciplinary sanctions or other actions that are not supportive measures against a respondent.

- (3) The Title IX Coordinator will promptly contact the complainant to discuss the availability of supportive measures, consider the complainant's wishes with respect to supportive measures, inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, and explain to the complainant the process for filing a formal complaint.
- (4) The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.
- (5) MTSU may remove a respondent from an education program or activity on an emergency basis only after undertaking an individualized safety and risk analysis, determining that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal, and providing the respondent with notice and an opportunity to challenge the decision immediately following the removal.
- (6) MTSU may place a non-student employee respondent on administrative leave during the pendency of a grievance process.

Authority: T.C.A. §§ 49-8-101(a)(2)(A) and 49-8-203(a)(1)(D) & 49-8-203(a)(4).

0240-07-06-.07 Confidentiality is added to Chapter 0240-07-06 Title IX Compliance and shall read as follows:

0240-07-06-.07 Confidentiality

- (1) MTSU will keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a formal complaint, any complainant, any individual who has been reported to be the perpetrator of sex discrimination, any respondent, and any witness, except as may be permitted or required by federal or state law, or to carry out the purposes of this rule and attendant policies, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.
- (2) MTSU will maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality does not impair MTSU's ability to provide the supportive measures.

Authority: T.C.A. §§ 49-8-101(a)(2)(A) and 49-8-203(a)(1)(D) & 49-8-203(a)(4).

0240-07-06-.08 Written Notice to the Parties Upon MTSU's Receipt of a Formal Complaint is added to Chapter 0240-07-06 Title IX Compliance and shall read as follows:

0240-07-06-.08 Written Notice to the Parties Upon MTSU's Receipt of a Formal Complaint

- (1) When a formal complaint is filed, MTSU will provide parties with a written notice of its grievance process, including any informal resolution process(es).
- (2) MTSU will provide written notice of the allegations potentially constituting sexual harassment, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview. Sufficient details include the identities of the parties involved in the incident, if known, the conduct allegedly constituting sexual harassment, and the date and location of the alleged incident, if known.
- (3) MTSU's written notice will include a statement that:
  - (a) The respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process;
  - (b) The parties may have an advisor of their choice, who may be, but is not required to be, an attorney;
  - (c) The parties may inspect and review evidence; and

(d) Identifies any provision in its codes of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.

- (4) If, in the course of an investigation, MTSU decides to investigate allegations about the complainant or respondent that are not included in the initial written notice, MTSU will provide notice of the additional allegations to the parties whose identities are known.

Authority: T.C.A. §§ 49-8-101(a)(2)(A) and 49-8-203(a)(1)(D) & 49-8-203(a)(4).

0240-07-06-.09 Investigations of Formal Complaints is added to Chapter 0240-07-06 Title IX Compliance and shall read as follows:

#### 0240-07-06-.09 Investigations of Formal Complaints

- (1) MTSU will investigate, to the extent necessary or possible, the allegations in a formal complaint.
- (2) If the conduct alleged in a formal complaint would not constitute sexual harassment even if proved, did not occur in MTSU's education program or activity, or did not occur against a person while in the United States, MTSU will dismiss the formal complaint with regard to that conduct for purposes of sexual harassment under Title IX; such a dismissal does not, however, preclude action under another provision of MTSU's codes of conduct or other policies.
- (3) MTSU may dismiss a formal complaint or any allegations therein, if at any time during the investigation a complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein, the respondent is no longer enrolled or employed by MTSU; or specific circumstances prevent MTSU from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.
- (4) If MTSU dismisses a formal complaint during the investigation phase, MTSU will promptly send written notice of the dismissal and reason(s) therefor simultaneously to the parties.
- (5) MTSU may consolidate formal complaints as to allegations of sexual harassment against more than one (1) respondent, or by more than one (1) complainant against one (1) or more respondents, or by one (1) party against the other party, where the allegations of sexual harassment arise out of the same facts or circumstances.
- (6) The burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rest on MTSU and not on the parties.
- (7) MTSU will not access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and are made and maintained in connection with the provision of treatment to the party, unless MTSU obtains that party's voluntary, written consent to do so for a grievance process.
- (8) MTSU will provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence.
- (9) MTSU will not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence.
- (10) MTSU will provide the parties with the same opportunities to have others present during any interview or investigative process, including the opportunity to be accompanied to any related investigation meeting by the advisor of their choice, who may be, but is not required to be, an attorney.
- (11) MTSU will not limit the choice or presence of an advisor for either the complainant or respondent in any investigative meeting; however, MTSU may establish restrictions regarding the extent to which the advisor may participate in the proceedings, as long as the restrictions apply equally to both parties.
- (12) MTSU will provide to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all investigative interviews, or other meetings with a party, with

sufficient time for the party to prepare to participate.

- (13) MTSU will provide both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, including the evidence upon which MTSU does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation.
- (14) Prior to completion of the investigative report, MTSU will send to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy.
- (15) MTSU will allow the parties ten (10) business days to submit a written response, which the investigator will consider prior to completion of the investigative report.
- (16) MTSU will create an investigative report that fairly summarizes relevant evidence.
- (17) At least ten (10) business days prior to a hearing or other time of determination regarding responsibility, MTSU will send the investigative report in electronic format or a hard copy to each party and the party's advisor, if any, for their review and written response to the investigative report.

Authority: T.C.A. §§ 49-8-101(a)(2)(A) and 49-8-203(a)(1)(D) & 49-8-203(a)(4).

0240-07-06-.10 Grievance Process for Formal Complaints—General Provisions is added to Chapter 0240-07-06 Title IX Compliance and shall read as follows:

0240-07-06-.10 Grievance Process for Formal Complaints—General Provisions

- (1) MTSU will apply its grievance procedures and requirements equally to both parties.
- (2) During the course of the grievance process, MTSU will treat complainants and respondents equitably by providing remedies to a complainant where a determination of responsibility for sexual harassment has been made against the respondent, and by following its grievance process before the imposition of any disciplinary sanctions or other actions that are not supportive measures against a respondent.
- (3) MTSU will design remedies to restore or preserve equal access to MTSU's education program or activity. Such remedies may include supportive measures; however, remedies need not be non-disciplinary or non-punitive and need not avoid burdening the respondent.
- (4) MTSU will ensure that the Title IX Coordinator, investigator, hearing officer, or decision-maker does not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent. The intent of this provision is to provide protections analogous to, and no less protective than, the conflict of interest provisions of T.C.A. § 4-5-303.
- (5) MTSU will require an objective evaluation of all relevant evidence – including both inculpatory and exculpatory evidence – and prohibit credibility determinations based on a person's status as a complainant, respondent, or witness.
- (6) MTSU will presume that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.
- (7) MTSU will apply a preponderance of the evidence standard for all formal complaints.
- (8) MTSU will require the grievance process, including the appeal process, to conclude within a reasonably prompt time frame.
- (9) MTSU will provide the range of possible disciplinary sanctions and remedies or list the possible disciplinary sanctions and remedies that MTSU may implement following any determination of responsibility.
- (10) MTSU will describe the range of supportive measures available to complainants and respondents.

- (11) MTSU will provide the parties with the same opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney.
- (12) MTSU will not limit the choice or presence of advisor for either the complainant or respondent in any grievance proceeding; however, MTSU may establish restrictions regarding the extent to which the advisor may participate in the proceedings, as long as the restrictions apply equally to both parties.
- (13) MTSU will provide to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all proceedings or hearings, or other meetings with a party, with sufficient time for the party to prepare to participate.
- (14) MTSU will appoint a hearing officer that meets the training requirements set forth in T.C.A. § 4-5-324.

Authority: T.C.A. §§ 49-8-101(a)(2)(A) and 49-8-203(a)(1)(D) & 49-8-203(a)(4).

0240-07-06-.11 Specific Provisions Related to Conducting a Hearing of Formal Complaints is added to Chapter 0240-07-06 Title IX Compliance and shall read as follows:

0240-07-06-.11 Specific Provisions Related to Conducting a Hearing of Formal Complaints

- (1) MTSU will conduct a live hearing of formal complaints not dismissed pursuant to this rule.
- (2) At the request of either party, MTSU will provide for the live hearing to occur with the parties located in separate rooms with technology enabling the hearing officer and parties to simultaneously see and hear the party or the witness answering questions.
- (3) Live hearings may be conducted with all parties physically present in the same geographic location or, at MTSU's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually, with technology enabling participants simultaneously to see and hear each other.
- (4) At least seventy-two (72) hours prior to a live hearing, MTSU will provide both parties with written notice of the following:
  - (a) The time, place, date of the hearing, and electronic access information, if applicable;
  - (b) The name of each witness MTSU expects to present at the hearing and those MTSU may present if the need arises;
  - (c) The right to request a copy of the investigative file;
  - (d) The right to request copies of all documents, copies of all electronically stored information, and access to tangible evidence that MTSU has in its possession, custody, or control and may use to support claims or defenses.
- (5) When notice is sent by United States mail or courier service, the notice is effective on the date that the notice is mailed or delivered to the courier service. When notice is hand delivered to the parties from the institution, notice is effective on the date that the notice is delivered to the parties. When notice is sent by email, the notice is effective on the date that the email is sent to the parties' institution-provided email account.
- (6) The hearing officer may allow a temporary delay of the grievance process or the limited extension of time frames for good cause with written notice to the complainant and the respondent of the delay or extension and the reasons for the action. Good cause may include but is not limited to considerations such as the absence of a party, a party's advisor, or a witness, concurrent law enforcement activity, or the need for language assistance or accommodation of disabilities.
- (7) In cases that involve more than one (1) respondent, the hearing officer may, consistent with the requirements of Title IX, consider whether separate proceedings are necessary to avoid undue prejudice to the respondents.

- (8) During the hearing, the hearing officer will make evidence subject to review and inspection during the investigation phase available to give each party equal opportunity to refer to that evidence, including for purposes of cross-examination.
- (9) Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.
- (10) Only relevant cross examination and other questions may be asked of a party or witness. Before a complainant, respondent, or witness answers a cross-examination or other question, the hearing officer will first determine whether the question is relevant and explain any decision to exclude a question as not relevant.
- (11) The hearing officer will not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.
- (12) Notwithstanding any limitations to the contrary that MTSU has placed on the advisor's participation in the hearing, the hearing officer will permit each party's advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility. Such cross-examination at the live hearing will be conducted directly, orally, and in real time by the party's advisor of choice and never by a party personally.
- (13) If a party does not have an advisor at the live hearing, MTSU will provide without fee or charge to that party an advisor of MTSU's choice, who may be, but is not required to be, an attorney, to conduct cross-examination on behalf of that party.
- (14) If a party or witness does not submit to cross-examination at the live hearing, the hearing officer will not rely on any statement of that party or witness in reaching a determination regarding responsibility; provided, however, that the hearing officer cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions.
- (15) MTSU will create an audio or audiovisual recording, or transcript, of any live hearing and make it available to the parties for inspection and review.
- (16) The hearing officer may dismiss the formal complaint or any allegations therein, if at any time during the hearing a complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein, the respondent is no longer enrolled or employed by MTSU, or specific circumstances prevent MTSU from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.
- (17) If the hearing officer dismisses the formal complaint during the grievance process, the hearing officer will promptly notify the Title IX Coordinator who will promptly send written notice of the dismissal and reason(s) therefor simultaneously to the parties.

Authority: T.C.A. §§ 49-8-101(a)(2)(A) and 49-8-203(a)(1)(D) & 49-8-203(a)(4).

0240-07-06-.12 Determination Regarding Responsibility is added to Chapter 0240-07-06 Title IX Compliance and shall read as follows:

0240-07-06-.12 Determination Regarding Responsibility

- (1) The hearing officer will issue a written determination simultaneously to the complainant and respondent regarding responsibility, using a preponderance of the evidence to reach a determination.
- (2) The written determination must include:

- (a) Identification of allegations potentially constituting sexual harassment;
  - (b) A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
  - (c) Findings of fact supporting the determination;
  - (d) Conclusions regarding the application of MTSU's rule, policy, and, if applicable, code of conduct to the facts;
  - (e) A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions MTSU imposes on the respondent, and whether remedies designed to restore or preserve equal access to MTSU's education program or activity will be provided to the complainant; and
  - (f) MTSU's procedures and permissible bases for the complainant and/or respondent to appeal.
- (3) The Title IX Coordinator will be responsible for effective implementation of any remedies.
- (4) The determination regarding responsibility becomes final either on the date that MTSU provides the parties with the written appeal decision, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.

Authority: T.C.A. §§ 49-8-101(a)(2)(A) and 49-8-203(a)(1)(D) & 49-8-203(a)(4).

0240-07-06-.13 Appeal of Determination of Responsibility or Dismissal of Formal Complaint is added to Chapter 0240-07-06 Title IX Compliance and shall read as follows:

0240-07-06-.13 Appeal of Determination of Responsibility or Dismissal of Formal Complaint

- (1) Both parties may appeal a determination regarding responsibility or the dismissal of a formal complaint or any allegations therein, only on the following bases:
  - (a) Procedural irregularity that affected the outcome of the matter;
  - (b) New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made and that could affect the outcome of the matter; and
  - (c) The Title IX Coordinator, investigator(s), or hearing officer had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.
- (2) A party wishing to appeal a determination regarding responsibility or the dismissal of a formal complaint or any allegations therein must file a written appeal with the Title IX Coordinator within ten (10) business days of the date of the determination or the dismissal. The written appeal must identify the basis or bases for the appeal and explain with specificity the facts supporting the basis or bases of the appeal.
- (3) In the event of an appeal filed by the other party, the non-appealing party will be permitted to submit a written statement in support of the outcome.
- (4) As to all appeals, the Title IX Coordinator will:
  - (a) Notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties;
  - (b) Ensure that the decision-maker(s) for the appeal is not the same person as any investigator(s) or the hearing officer that reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator;
  - (c) Ensure that the decision-maker(s) for the appeal complies with the standards set forth in Rule 0240-

07-06-.10 (4).

- (5) Within a reasonable time, the decision-maker(s) will issue a written appeal decision describing the result of the appeal and the rationale for the result.
- (6) The Title IX Coordinator will provide the written appeal decision simultaneously to both parties.

Authority: T.C.A. §§ 49-8-101(a)(2)(A) and 49-8-203(a)(1)(D) & 49-8-203(a)(4).

0240-07-06-.14 Informal Resolution Process is added to Chapter 0240-07-06 Title IX Compliance and shall read as follows:

0240-07-06-.14 Informal Resolution Process

- (1) MTSU will not require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, waiver of the right to an investigation and adjudication of formal complaints of sexual harassment.
- (2) MTSU will not require the parties to participate in an informal resolution process and may not offer an informal resolution process unless a formal complaint is filed. However, at any time prior to reaching a determination regarding responsibility, MTSU may facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication, but only if MTSU:
  - (a) Provides to the parties a written notice disclosing the allegations, the requirements of the informal resolution process including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations;
  - (b) Any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared;
  - (c) Obtains the parties' voluntary, written consent to the informal resolution process; and
  - (d) Does not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.
- (3) At any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint.
- (4) MTSU will ensure that an individual designated to facilitate an informal resolution process does not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent. The intent of this provision is to provide protections analogous to, and no less protective than, the conflict of interest provisions of T.C.A. § 4-5-303.
- (5) MTSU will require an informal resolution process to conclude within a reasonably prompt time frame.

Authority: T.C.A. §§ 49-8-101(a)(2)(A) and 49-8-203(a)(1)(D) & 49-8-203(a)(4).

0240-07-06-.15 Retaliation is added to Chapter 0240-07-06 Title IX Compliance and shall read as follows:

0240-07-06-.15 Retaliation

- (1) Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX or this rule, constitutes retaliation.
- (2) The exercise of rights protected under the First Amendment does not constitute retaliation.
- (3) Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance process does not constitute retaliation, provided, however, that a



determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.

- (4) Complaints alleging retaliation may be filed with the Title IX Coordinator who will follow the procedures and processes used for sex discrimination as described in 0240-07-06-.05.

Authority: T.C.A. §§ 49-8-101(a)(2)(A) and 49-8-203(a)(1)(D) & 49-8-203(a)(4).

0240-07-06-.16 Training Related to Sexual Harassment is added to Chapter 0240-07-06 Title IX Compliance and shall read as follows:

#### 0240-07-06-.16 Training Related to Sexual Harassment Issues

- (1) MTSU will ensure that its Title IX Coordinator, investigators, hearing officers, decision-makers, and any person who facilitates an informal resolution process receive training on this rule's definition of sexual harassment, the scope of MTSU's education program or activity, how to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias.
- (2) Such training will satisfy the requirements of Title IX and be developed or conducted consistent with the requirements of state law, including but not limited to T.C.A. § 4-5-324.
- (3) MTSU will ensure that hearing officers receive training on any technology to be used at a live hearing.
- (4) MTSU will ensure that hearing officers receive training on issues of relevance of questions and evidence, including when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant.
- (5) MTSU will ensure that investigators receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence.
- (6) MTSU will ensure that any materials used to train Title IX Coordinators, investigators, hearing officers, decision-makers, and any person who facilitates an informal resolution process promote impartial investigations and adjudications of formal complaints and do not rely on sex stereotypes.

Authority: T.C.A. §§ 49-8-101(a)(2)(A) and 49-8-203(a)(1)(D) & 49-8-203(a)(4).

0240-07-06-.17 Effect of Other Requirements is added to Chapter 0240-07-06 Title IX Compliance and shall read as follows:

#### 0240-07-06-.17 Effect of Other Requirements

- (1) MTSU will not restrict any rights protected from government action by the First Amendment of the U.S. Constitution, deprive a person of any rights that would otherwise be protected from government action under the Due Process Clauses of the Fifth and Fourteenth Amendments of the U.S. Constitution, or restrict any other rights guaranteed against government action by the U.S. Constitution or State of Tennessee Constitution.

Authority: T.C.A. §§ 49-8-101(a)(2)(A) and 49-8-203(a)(1)(D) & 49-8-203(a)(4).

0240-07-06-.18 Record Retention and Disposition is added to Chapter 0240-07-06 Title IX Compliance and shall read as follows:

#### 0240-07-06-.18 Record Retention and Disposition

- (1) MTSU will retain and dispose of records related to Title IX matters as required by federal and state laws and regulations.

Authority: T.C.A. §§ 49-8-101(a)(2)(A) and 49-8-203(a)(1)(D) & 49-8-203(a)(4).

0240-07-06-.19 Severability is added to Chapter 0240-07-06 Title IX Compliance and shall read as follows:

0240-07-06-.19 Severability

- (1) If any provision of this rule or its application to any person, act, or practice is held invalid, the remainder of the rule or the application of its provisions to any person, act, or practice shall not be affected thereby.
- (2) If any provision of the Title IX regulations on which this rule is based is enjoined or held invalid or the Title IX regulations' application to any person, act, or practice is enjoined or held invalid, the remainder of this rule or the application of its provisions to any person, act, or practice shall not be affected thereby.

Authority: T.C.A. §§ 49-8-101(a)(2)(A) and 49-8-203(a)(1)(D) & 49-8-203(a)(4).

I certify that the information included in this filing is an accurate and complete representation of the intent and scope of rulemaking proposed by the agency.

Date: 7/22/2020

Signature: *Heidi Zimmerman*

Name of Officer: Heidi Zimmerman

Title of Officer: University Counsel

**Department of State Use Only**

Filed with the Department of State on: \_\_\_\_\_

\_\_\_\_\_  
Tre Hargett  
Secretary of State





## **29 Title IX Compliance**

**Approved by Board of Trustees**

**Effective Date:** \_\_\_\_\_, 2020

**Responsible Division:** President

**Responsible Office:** Institutional Equity and Compliance

**Responsible Officer:** Assistant to the President for Institutional Equity and Compliance

### **I. Policy**

- A. Middle Tennessee State University (MTSU or University) does not discriminate on the basis of sex in the education program or activity that it operates, including admission and employment, and is required by Title IX of the Education Amendments of 1972 and 34 C.F.R. Part 106 (collectively "Title IX") not to discriminate in such a manner. Inquiries about the application of Title IX to MTSU may be referred to the Title IX Coordinator (see Section III, below), to the U.S. Department of Education Assistant Secretary for Civil Rights, or both. As required by applicable law, no student, employee, or applicant for admission or employment will be excluded, on the basis of sex, from participation in, be denied the benefit of, or be subjected to discrimination in any MTSU education program or activity.
- B. MTSU will not use or distribute a publication stating that it treats applicants, students, or employees differently on the basis of sex except as such treatment is permitted by Title IX.
- C. MTSU will not restrict any rights protected from government action by the First Amendment of the U.S. Constitution, deprive a person of any rights that would otherwise be protected from government action under the Due Process Clauses of the Fifth and Fourteenth Amendments of the U.S. Constitution, or restrict any other rights guaranteed against government action by the U.S. Constitution or State of Tennessee Constitution. Any action taken to address an allegation of harassment under this policy shall not infringe on rights protected under the U.S. Constitution, including the First Amendment, Fifth Amendment, and Fourteenth Amendment.
- D. Notifications. MTSU will notify applicants for admission and employment, students, employees, and any professional organizations holding professional agreements with MTSU of the requirements of this policy, including notice of the grievance policy specified below, how to report or file a Formal Complaint of Sexual Harassment, and

how MTSU will respond to such complaints. MTSU will prominently display the contact information for the Title IX Coordinator listed in Section III, its Title IX policies and procedures, and its training materials as required by Title IX on its website and in any handbook or catalog that it makes available to such individuals and organizations.

## II. Scope

- A. This policy applies when MTSU has actual knowledge of allegations of Sexual Harassment in any of MTSU's educational programs or activities against persons present in the United States.
- B. When a person alleges both sex discrimination and Sexual Harassment committed against a person while in the United States, MTSU will follow its rules, procedures, and processes for responding to a Formal Complaint of Sexual Harassment. If the Formal Complaint is dismissed at any point in the process, MTSU will follow its rules, procedures, and processes used for sex discrimination allegations.
- C. Allegations of discrimination, Sexual Harassment, or other sexual misconduct outside the scope of this policy may be addressed under other MTSU policies, including but not limited to [Policy 26 Discrimination and Harassment Based on Protected Categories Other Than Sex](#), [Policy 27 Misconduct, Discrimination, and Harassment Based on Sex Including Pregnancy, Sexual Orientation, and Gender Identity/Expression](#), and [Policy 540 Student Conduct](#).

## III. Title IX Coordinator

- A. Contact Information: The Title IX Coordinator for MTSU is:

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

The Title IX Coordinator will ensure that applicants for admission and employment, students, employees, and any professional organizations holding professional agreements with MTSU are provided with the contact information for the Title IX Coordinator listed above.

- B. Responsibilities. The Title IX Coordinator shall coordinate MTSU's efforts to comply with this policy and Title IX.

#### IV. Definitions

- A. Actual Knowledge. Notice of Sexual Harassment or allegations of Sexual Harassment to any of the following:
1. Title IX Coordinator.
  2. Any official who has authority to institute corrective measures on behalf of MTSU. The Actual Knowledge standard is not met when the only official of MTSU with actual knowledge is also the Respondent.

These individuals may become aware of Sexual Harassment if they witness Sexual Harassment; hear about Sexual Harassment or Sexual Harassment allegations from a Complainant (i.e., a person alleged to be the victim) or a third party (e.g., the Complainant's parent, friend, or peer); receive a written or verbal complaint about Sexual Harassment or Sexual Harassment allegations; or by any other means.

- B. Complainant. An individual who is alleged to be the victim of conduct that could constitute Sexual Harassment. Complainant does not mean the Title IX Coordinator when the Title IX Coordinator signs a Formal Complaint or is not otherwise an alleged victim of Sexual Harassment.
- C. Conflict of Interest. The standard for a conflict of interest as set forth in this policy shall be determined based on the criteria analogous to and no less protective than those set forth in T.C.A. § 4-5-303.
- D. 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.
- E. Deliberately Indifferent. A response that is clearly unreasonable in light of the known circumstances.
- F. Education Program or Activity. Locations, events, or circumstances over which MTSU exercises substantial control over both the Respondent and the context in which the alleged Sexual Harassment occurred, and also includes any building owned or controlled by a student organization that is officially recognized by MTSU. Conduct that occurs outside of MTSU's Program or Activity as defined in this policy may be subject to other applicable University policy.

- G. **Formal Complaint.** A document filed by a Complainant or signed by the Title IX Coordinator alleging Sexual Harassment against a Respondent and requesting that MTSU investigate the allegation of Sexual Harassment. As used in this paragraph, the phrase “document filed by a Complainant” means a document or electronic submission (such as by electronic mail or through MTSU’s online reporting portal) that contains the Complainant’s physical or digital signature, or otherwise indicates that the Complainant is the person filing the Formal Complaint. Where the Title IX Coordinator signs a Formal Complaint, the Title IX Coordinator is not a Complainant or otherwise a party under these procedures and must comply with the requirements of this policy.
- H. **Hearing Officer.** The person who is the decision-maker with respect to the determination of responsibility after a live hearing. Hearing Officer may also mean a committee that is the decision-maker with respect to the determination of responsibility after a live hearing. A Hearing Officer cannot be the same person(s) as the Title IX Coordinator or the Investigator(s).
- I. **Party.** Either Complainant or Respondent. References to the plural “parties” includes Complainant and Respondent.
- J. **Respondent.** An individual who has been reported to be the perpetrator of conduct that could constitute Sexual Harassment.
- K. **Sexual Harassment.** Conduct on the basis of sex that satisfies one (1) or more of the following:
1. An employee conditioning the provision of an aid, benefit, or service of MTSU on an individual’s participation in unwelcome sexual conduct;
  2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to MTSU’s education program or activity; or
  3. Any of the following offenses:
    - a. **Sexual Assault.** An offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation.
      - (1) **Forcible Sex Offenses.** Any sexual act directed against the Complainant, without the consent of the Complainant including instances where the Complainant is incapable of giving consent. Forcible sex offenses include:
        - i. **Rape (Excluding statutory rape).** The carnal knowledge of the Complainant, without the consent of the Complainant, including



instances where the Complainant is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity.

- ii. Sodomy. Oral or anal sexual intercourse with the Complainant, without the consent of the Complainant, including instances where the Complainant is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity.
- iii. Sexual Assault with an Object. To use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of the Complainant, without the consent of the Complainant including instances where the Complainant is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity. An “object” or “instrument” as defined in this section is anything used by the offender other than the offender’s genitalia (e.g., a finger or bottle).
- iv. Fondling. The touching of the private body parts of the Complainant for the purpose of sexual gratification, without the consent of the Complainant, including instances where the Complainant is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity.

(2) Nonforcible Sex Offenses. Nonforcible sex offenses include:

- i. Incest. Nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- ii. Statutory Rape. Nonforcible sexual intercourse with a person who is under the statutory age of consent.

b. Dating Violence. Violence committed by a person:

(1) who is, or has been, in a social relationship of a romantic or intimate nature with the Complainant; and

(2) where the existence of such a relationship shall be determined based on a consideration of the following factors:

- i. The length of the relationship.
- ii. The type of relationship.

- iii. The frequency of interaction between the persons involved in the relationship.
- c. Domestic Violence. Violence committed by a current or former spouse or intimate partner of the Complainant, by a person with whom the Complainant shares a child in common, by a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner, by a person similarly situated to a spouse of the Complainant under the laws of the State of Tennessee, or by any other person against an adult or youth Complainant who is protected from that person's acts under the domestic or family violence laws of the State of Tennessee; or
- d. Stalking. Engaging in a course of conduct directed at a specific person that would cause a reasonable person to:
  - (1) fear for their safety or the safety of others; or
  - (2) suffer substantial emotional distress.
- L. Supportive Measures. Non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or the Respondent before or after the filing of a Formal Complaint or where no Formal Complaint has been filed. Such measures are designed to restore or preserve equal access to MTSU's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties and/or the educational environment, or deter Sexual Harassment.

Examples of Supportive Measures include, but are not limited to:

1. Ensuring, when possible, that the complainant and respondent do not attend the same classes;
2. Moving the complainant or respondent to a different residence hall or different work space;
3. Providing access to counseling services;
4. Providing or assisting in providing medical services;
5. Providing assistance for academic modifications, such as extra time to complete course work or modifications to courses or assignments, where possible;
6. Leaves of absence when possible and appropriate; and

7. Mutual no contact orders.

The Title IX Coordinator is responsible for coordinating the effective implementation of Supportive Measures.

- M. Written Notice. Notice to a student or employee to their official MTSU email account as well as a hard copy letter sent via first class USPS mail to their local address on file with the University. A notice sent to a recognized MTSU organization will be sent to the organization's president at their MTSU email address and his/her local address. Students and employees have the responsibility to regularly check their University-issued email accounts and to ensure that the local address on file with MTSU is current.

Written notice to individuals or entities that are not affiliated with the University will be sent to the email address and/or USPS mail address on file with the University, if any.

When notice is sent pursuant to this section by United States mail or courier service, the notice is effective on the date that the notice is mailed or delivered to the courier service. When notice is hand delivered to the student from the institution, notice is effective on the date that the notice is delivered to the student or employee to whom the notice is addressed. When notice is sent by email, the notice is effective on the date that the email is sent to the student's or employee's institution-provided email account.

## **V. Reports and Formal Complaints of Sexual Harassment**

- A. Making a Report to the Title IX Coordinator. Any person may report sex discrimination, including Sexual Harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or Sexual Harassment), in person, by mail, by telephone, or by electronic mail, MTSU's online reporting portal, using the contact information listed for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report. Such a report may be made at any time (including during non-business hours) by using the telephone number, online reporting portal, or electronic mail address, or by mail to the office address, listed for the Title IX Coordinator.

The following MTSU employees are required to report sex discrimination, including Sexual Harassment, of which they are aware, to the Title IX Coordinator.

1. Title IX Deputy Coordinators;
2. University Police;
3. Residence hall/housing area coordinators, resident directors, and resident assistants;

4. President, Provost, Vice Provosts, Associate Vice Provosts, Assistant Vice Provosts, Vice Presidents, Associate Vice Presidents, Assistant Vice Presidents;
  5. Deans, Associate Deans, Assistant Deans, Directors, Associate Directors, Assistant Directors, Department Chairs/Heads;
  6. Faculty and graduate assistants;
  7. Advising managers;
  8. Advisors for student organizations;
  9. Athletic coaches and trainers;
  10. Athletic Director, Associate Athletic Director(s), and Assistant Athletic Directors; and
  11. Campus Security Authorities.
- B. Response to Actual Knowledge of Sexual Harassment. If MTSU has actual knowledge of Sexual Harassment in an education program or activity committed against a person while in the United States, MTSU will respond promptly in a manner that is not deliberately indifferent and follow its Grievance Process.
- C. With or without a Formal Complaint, after receiving actual knowledge of Sexual Harassment, the Title IX Coordinator will:
1. Promptly contact the Complainant to discuss the availability of Supportive Measures;
  2. Consider the Complainant's wishes with respect to Supportive Measures;
  3. Inform the Complainant of the availability of Supportive Measures, with or without the filing of a Formal Complaint; and
  4. Explain to the Complainant the process for filing a Formal Complaint.
    - a. A Formal Complaint may be filed with the Title IX Coordinator in person, by mail, through MTSU's online reporting portal, or by electronic mail, by using the contact information set forth in Section III.
    - b. At the time of filing a Formal Complaint, a Complainant must be participating in, or attempting to participate in, the education program or activity of MTSU.

- c. In response to a Formal Complaint, MTSU will follow the Grievance Process set forth in Section VI.
- D. MTSU's Response to a Report of Sexual Harassment. MTSU's response to receiving actual knowledge of Sexual Harassment will treat Complainants and Respondents equitably by offering Supportive Measures to a Complainant, and by following the Grievance Process set forth in Section VI, before the imposition of any disciplinary sanctions or other actions that are not Supportive Measures, against a Respondent.
- E. Interim Suspension of Student. Notwithstanding the above, MTSU may remove a Respondent from MTSU's education program or activity on an emergency basis, with or without a Grievance Process pending, provided that MTSU undertakes an individualized safety and risk analysis, and determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of Sexual Harassment justifies removal, and provides the Respondent with written notice and an opportunity to challenge the decision immediately following the removal. The procedure for the immediate removal of a student on an emergency basis is set forth in [Policy 540 Student Conduct](#).
- F. Administrative Leave of Employee. MTSU may place an employee Respondent on administrative leave during the pendency of the Grievance Process set forth in Section VI.

## VI. Grievance Procedures

- A. Purpose. The grievance procedures set forth below are intended to provide for the prompt and equitable resolution of a Formal Complaint by any student or employee alleging any action that would be prohibited by this policy.
- B. Notification of Grievance Procedures. MTSU will provide notice to applicants for admission and employment, students, employees, and any professional organizations holding professional agreements with MTSU of these grievance procedures and Grievance Process, including how to report or file a complaint of sex discrimination, how to report or file a Formal Complaint of Sexual Harassment, and how MTSU will respond.
- C. Basic Requirements. The following shall be required during MTSU's Grievance Process:
  - 1. Equitable Treatment. MTSU will apply its grievance procedures and requirements equally to both parties. During any proceeding under this policy, MTSU will treat Complainants and Respondents equitably by providing remedies to a Complainant where a determination of responsibility for Sexual Harassment has been made against the Respondent, and by following the Grievance Process set forth below before the imposition of any disciplinary sanctions or other actions that are not Supportive Measures against a Respondent. Remedies must be designed to restore

or preserve equal access to the education program or activity. Such remedies may be disciplinary or punitive in nature and need not avoid burdening the Respondent and may include the same individualized services set forth in Section IV.L. as Supportive Measures.

2. **Presumption of Non-Responsibility.** Throughout the Grievance Process set forth in this policy, the Respondent is presumed not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the Grievance Process.
3. **Objective Evaluation.** Any grievance pursuant to these procedures will include an objective evaluation of all relevant evidence, including both inculpatory and exculpatory evidence. Credibility determinations may not be based on a person's status as a Complainant, Respondent, or witness.
4. **Conflicts of Interest Prohibited.** The Title IX Coordinator, Investigator(s), Hearing Officer, decision-maker on appeal, or any person designated to facilitate an informal resolution process, shall be free from any conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent. The intent of this provision is to provide protections analogous to, and no less protective than, the conflict of interest provisions of T.C.A. § 4-5-303.

If any party believes that any of these individuals has a conflict of interest, that party must submit a written explanation of the reason for that belief to the Assistant Vice President for Human Resource Services (HRS). The explanation must be submitted within three (3) business days, absent good cause, of the time when the party knew or should have known the facts that would give rise to the alleged conflict of interest. The Assistant Vice President for HRS will determine if the facts warrant the appointment of a different Title IX Coordinator, Investigator, Hearing Officer, decision-maker on appeal, or informal resolution facilitator and will respond to the requesting party in writing within three (3) business days, absent good cause. The decision of the Assistant Vice President for HRS shall be final.

5. **Training.**
  - a. MTSU will provide annual training that satisfies the requirements of Title IX and will be developed or conducted consistent with the requirements of state law, including, but not limited to, T.C.A. § 4-5-324. Training materials must not rely on sex stereotypes and must promote impartial investigations and adjudications of Formal Complaints of Sexual Harassment.
  - b. The Title IX Coordinator, Investigators, Hearing Officers, decision-makers on appeal, and any person who facilitates an informal resolution process will be trained on the following matters:

- (1) The definition of Sexual Harassment;
  - (2) The scope of MTSU's education program or activity;
  - (3) How to conduct an investigation and Grievance Process including hearings, appeals, and informal resolution processes, as applicable;
  - (4) How to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias;
- c. Hearing Officers will receive annual training on the matters listed above as well as:
- (1) Any technology to be used at a live hearing; and
  - (2) Issues of relevance of questions and evidence, including when questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant, as set forth in Section XI.A.8.
- d. Investigators will receive additional training on issues of relevance to create an Investigative Report that fairly summarizes relevant evidence, as set forth in Section X.
- e. All materials used to train Title IX Coordinators, Investigators, Hearing Officers, decision-makers on appeal, and any person who facilitates an informal resolution process will be publicly available on MTSU's website.
- D. Time Frames. MTSU will endeavor to complete the Grievance Process set forth herein within one hundred twenty (120) days of the filing of the Formal Complaint (not including appeal or time periods spent attempting informal resolution). This time frame and others set forth in this policy are guideposts and may be extended for good cause. Good cause may include considerations such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities. The Complainant and Respondent shall be promptly notified of the need for any delay.
- E. Available Sanctions and Remedies. The possible disciplinary sanctions and remedies that MTSU may implement following any determination of responsibility will vary based on the status of the Respondent:
1. Administrative and Classified Employees: [Policy 851 Disciplinary Policy for Administrative and Classified Personnel](#), Section IV.

2. Faculty: [Policy 204 Tenure](#), Section VIII. G and H.
  3. Students: [Policy 540 Student Conduct](#), Section VI.
- F. Standard of Evidence. The standard of evidence to be used to determine responsibility is the preponderance of the evidence standard.
- G. Privileged Materials. Neither the University nor any party will be required or allowed to rely upon, or otherwise use questions or evidence that constitute or seek disclosure of, information protected under a legally recognized privilege unless the person holding such privilege has waived the privilege.

## VII. Notice of Allegations

- A. Upon receipt of a Formal Complaint, the Title IX Coordinator or Investigator will provide the following written notices to the parties who are known:
1. Notice of MTSU's Grievance Process including any informal resolution process.
  2. Notice of the allegations of conduct potentially constituting Sexual Harassment, including sufficient details known at the time. This notice shall be provided with sufficient time to prepare a response before any initial interview.  
  
Sufficient details include:
    - a. The identities of the parties involved in the incident, if known.
    - b. The conduct allegedly constituting Sexual Harassment.
    - c. The date and location of the alleged incident, if known.
  3. A statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the Grievance Process.
  4. Notice to the parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney and the extent to which MTSU will allow the advisor to participate in an investigation or hearing under this Policy (See Section X.E.).
  5. Notice that the parties may inspect and review evidence as set forth in Section X.G.
  6. Notice to the parties that knowingly making false statements or knowingly submitting false information during the Grievance Process is prohibited. (See [Policy](#)



[540 Student Conduct](#), Section IV.A.11. Unacceptable Conduct in Disciplinary Proceedings; [Policy 10 Ethics and Code of Conduct](#); [Policy 204 Tenure](#), Section VIII.G.; [Policy 851 Disciplinary Policy for Administrative and Classified Personnel](#), Section IV.B.)

- B. If, in the course of an investigation, MTSU decides to investigate allegations about the Complainant or Respondent that are not included in the original written notice discussed above, MTSU will provide written notice of the additional allegations to the parties whose identities are known.

### **VIII. Dismissal of a Formal Complaint**

- A. Mandatory Dismissal. MTSU must dismiss the Formal Complaint with regard to any alleged conduct that:
  - 1. would not constitute Sexual Harassment under this policy, even if proved;
  - 2. did not occur in MTSU's education program or activity; or
  - 3. did not occur against a person present in the United States at the time of the alleged conduct.

If appropriate, the Title IX Coordinator will forward allegations of misconduct dismissed under this section to the appropriate administrative office for review and, if appropriate, additional action under other University rules and procedures may be taken.

- B. Permissive Dismissal. MTSU may dismiss the Formal Complaint or any allegations therein, if at any time during the investigation or hearing:
  - 1. Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the Formal Complaint or any allegations therein;
  - 2. Respondent is no longer enrolled or employed by MTSU; or
  - 3. Specific circumstances prevent MTSU from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations therein.
- C. Following a mandatory or permissive dismissal set forth above, the Title IX Coordinator must promptly send written notice of the dismissal and reason(s) therefor simultaneously to the parties.

### **IX. Consolidation of Formal Complaints**

MTSU may consolidate Formal Complaints as to allegations of Sexual Harassment against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one party against the other party, where the allegations of Sexual Harassment arise out of the same facts or circumstances.

#### **X. Investigation of a Formal Complaint**

MTSU will investigate, to the extent necessary or possible, the allegations in a Formal Complaint. When investigating a Formal Complaint and throughout the Grievance Process, the investigator will observe the following requirements:

- A. **Burden of Proof.** The burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rests on MTSU and not on the parties;
- B. **Prohibition on Use of Privileged Documents.** MTSU may not access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless MTSU obtains that party's voluntary, written consent to do so for a Grievance Process under this section.
- C. MTSU will provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence.
- D. MTSU will not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence.
- E. **Use of an Advisor.** The parties are permitted to have others present during any Grievance Proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney. MTSU does not place any limits on the choice or presence of advisor for either the Complainant or Respondent in any meeting or Grievance Proceeding. Except for participation in cross-examination as set forth in Section XI.A.6., the advisor's role in any other meeting or proceeding shall be limited to an advisor role only and the advisor may not otherwise participate in the meeting or proceedings.
- F. **Notice to Parties.** The Investigator will provide to a party whose participation is invited or expected written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings with a party, with sufficient time for the party to prepare to participate.
- G. **Access to Evidence.** MTSU will allow both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the

allegations raised in a Formal Complaint, including the evidence upon which MTSU does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence, whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation.

Prior to completion of the Investigative Report, the Investigator will send to each party and the party's advisor (if any), the evidence subject to inspection and review in an electronic format or a hard copy. The parties will have ten (10) business days to submit a written response, which the Investigator will consider prior to completion of the Investigative Report. MTSU must make all such evidence subject to the parties' inspection and review available at any hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination.

- H. Final Investigative Report. The Investigator will create an Investigative Report that fairly summarizes relevant evidence. At least ten (10) days prior to a hearing or other time of determination regarding responsibility, the Investigator will send to each party and the party's advisor (if any), the Investigative Report in an electronic format or a hard copy, for their review and written response.

## **XI. Hearings**

- A. Hearing Procedures. At least ten (10) days after the completion of the Investigative Report and distribution to the parties and their advisors (if any), MTSU will convene a live hearing for any Formal Complaint not dismissed pursuant to this policy. The Hearing Officer maintains authority to set the procedures and control the conduct of the hearing provided that the Hearing Officer must observe the procedures required by this policy, Title IX, and other applicable MTSU rules or policies.
  - 1. Location of Hearing. Live hearings pursuant to this section may be conducted with all parties physically present in the same geographic location or, at MTSU's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually, with technology enabling participants simultaneously to see and hear each other.
  - 2. Availability of Evidence. The Hearing Officer will make all evidence that was subject to review and inspection during the investigation phase available to the parties during the hearing. The parties will have equal opportunity to refer to that evidence, including for purposes of cross-examination.
  - 3. Extensions of Time. The Hearing Officer may allow a temporary delay of the Grievance Process or the limited extension of time frames for good cause with written notice to the Complainant and the Respondent of the delay or extension and the reasons for the action. Good cause may include but is not limited to considerations such as the absence of a party, a party's advisor, or a witness,

- concurrent law enforcement activity, or the need for language assistance or accommodation of disabilities.
4. Separation of Parties. At the request of either party, the Hearing Officer will provide for the live hearing to occur with the parties located in separate rooms with technology enabling the Hearing Officer and parties to simultaneously see and hear the party or the witness answering questions.
  5. At least seventy-two (72) hours prior to a live hearing, MTSU will provide both parties with written notice of the following:
    - a. The time, place, and date of the hearing, and electronic access information, if applicable;
    - b. The name of each witness MTSU expects to present at the hearing and those MTSU may present if the need arises;
    - c. The right to request a copy of the investigative file; and
    - d. The right to request copies of all documents, copies of all electronically stored information, and access to tangible evidence that MTSU has in its possession, custody, or control and may use to support claims or defenses.
  6. Cross-examination. Each party's advisor will be permitted to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility. Cross-examination at the live hearing must be conducted directly, orally, and in real time by the party's advisor and never by a party personally. If a party does not have an advisor present at the live hearing, MTSU will provide an advisor of its choice to conduct cross-examination on behalf of that party without fee or charge to that party.
  7. Relevance. Only relevant questions may be asked of a party or witness on either direct or cross-examination. Before a Complainant, Respondent, or witness answers a question, the Hearing Officer must first determine whether the question is relevant. The Hearing Officer must explain any decision to exclude a question as not relevant.
  8. Complainant's Prior Sexual Behavior. Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant, except as follows:

- a. If such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant; or
  - b. If the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.
9. Exclusion of all evidence not subject to cross-examination. If a party or witness does not submit to cross-examination at the live hearing, the Hearing Officer must not rely on any statement of that party or witness in reaching a determination regarding responsibility; the Hearing Officer cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions.
10. Recording of Hearing. MTSU will create an audio or audiovisual recording or transcript of any live hearing and make it available to the parties for inspection and review.

B. Determination Regarding Responsibility

1. The Hearing Officer must issue a written determination regarding responsibility under the standard of evidence set forth in Section VI.F.
2. The written determination must include the following:
  - a. Identification of the allegations potentially constituting Sexual Harassment;
  - b. A description of the procedural steps taken from the receipt of the Formal Complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
  - c. Findings of fact supporting the determination;
  - d. Conclusions regarding the application of MTSU's rule, policy, and, if applicable, code of conduct to the facts;
  - e. A statement of, and rationale for, the result as to each allegation, including:
    - (1) A determination regarding responsibility;
    - (2) Any disciplinary sanctions MTSU imposes on the Respondent;

- (3) Whether remedies designed to restore or preserve equal access to MTSU's education program or activity will be provided by MTSU to the Complainant; and
- f. The procedures and permissible bases for the Complainant and Respondent to appeal.
3. The Hearing Officer will provide the written determination to the parties simultaneously. The determination regarding responsibility becomes final either on the date that MTSU provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.
4. If remedies were provided in the written determination, the Title IX Coordinator is responsible for effective implementation of any remedies.

## **XII. Appeals**

- A. Availability of Appeal. Both parties may appeal the following:
  1. A determination regarding responsibility; or
  2. The dismissal of a Formal Complaint or any allegations therein.
- B. Decision-maker on Appeal. The appeal will be decided by the President or their designee.
- C. Bases for Appeal. The bases of appeal shall be as follows:
  1. Procedural irregularity that affected the outcome of the matter;
  2. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made that could affect the outcome of the matter; and
  3. The Title IX Coordinator, Investigator(s), or Hearing Officer had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the outcome of the matter.
- D. Timeframe for Appeal. A party wishing to appeal a determination regarding responsibility or the dismissal of a Formal Complaint or any allegations therein must file a written appeal with the Title IX Coordinator within ten (10) business days of the date of the determination or the dismissal. The written appeal must identify the basis or

bases for the appeal and explain with specificity the facts supporting the basis or bases of the appeal.

- E. In the event of an appeal filed by the other party, the non-appealing party will be permitted to submit a written statement in support of the outcome within ten (10) business days after the Title IX Coordinator notifies the party of filing of the written appeal.
- F. Appeal Procedure. For any appeal made under this policy, the Title IX Coordinator or designee will:
  - 1. Notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties;
  - 2. Ensure that the decision-maker for the appeal is not the same person as any Investigator(s) or the Hearing Officer that reached the determination regarding responsibility or dismissal, the Investigator(s), or the Title IX Coordinator;
  - 3. Ensure that the decision-maker for the appeal meets the requirements of Section VI.C.4. and 5. regarding training, bias, and conflicts of interest; and
  - 4. The decision-maker for appeal will:
    - a. Give both parties a reasonable, equal opportunity to submit a written appeal statement in support of, or challenging, the outcome;
    - b. Issue a written decision describing the result of the appeal and the rationale for the result; and
    - c. Provide the written decision simultaneously to both parties.

### **XIII. Informal Resolution**

At any time prior to reaching a determination regarding responsibility on a Formal Complaint, with the voluntary, written consent of the parties, MTSU may facilitate an informal resolution process that does not involve a full investigation and adjudication.

- A. Prior to initiating an informal resolution process, the Title IX Coordinator or designee will provide to the parties a written notice disclosing:
  - 1. the allegations;

2. the requirements of the informal resolution process including the circumstances under which it precludes the parties from resuming a Formal Complaint arising from the same allegations;
  3. that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the Grievance Process with respect to the Formal Complaint; and
  4. any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared.
- B. Informal resolution is not available to resolve allegations that an employee sexually harassed a student.
- C. Absent good cause or agreement by the parties, any attempt to informally resolve the Formal Complaint must be completed within twenty (20) business days following the initiation of the informal resolution process, at which time investigation/adjudication will resume.
- D. MTSU will ensure that an individual designated to facilitate an informal resolution process does not have a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent. The intent of this provision is to provide protections analogous to, and no less protective than, the conflict of interest provisions of T.C.A. § 4-5-303.

#### **XIV. Retaliation**

- A. The procedures set forth in [Policy 27 Misconduct, Discrimination, and Harassment Based on Sex Including Pregnancy, Sexual Orientation, and Gender Identity/Expression](#) apply to complaints alleging retaliation, which includes:
1. Intimidation, threats, coercion, or discrimination against any individual for the purpose of interfering with any right or privilege secured by Title IX or because the individual has made a report or complaint, testified, assisted, or participated, or refused to participate, in any manner in an investigation, proceeding, or hearing under this policy is strictly prohibited.
  2. Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or Sexual Harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or Formal Complaint of Sexual Harassment, for the purpose of interfering with any right or privilege secured by Title IX.



- B. The exercise of rights protected under the First Amendment does not constitute retaliation prohibited by this policy.
- C. Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding under this Policy does not constitute retaliation prohibited by this policy, provided, however, that a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.

## **XV. Confidentiality**

MTSU will maintain the confidentiality of the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a Formal Complaint of Sexual Harassment, any Complainant, any individual who has been reported to be the perpetrator of sex discrimination, any Respondent, and any witness, except as may be permitted by the FERPA statute, 20 U.S.C. 1232g, or FERPA regulations, 34 CFR part 99, or as required by law, or to carry out the purposes of Title IX, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

MTSU will keep confidential any Supportive Measures provided to the Complainant or Respondent, to the extent that maintaining such confidentiality does not impair MTSU's ability to provide the Supportive Measures.

## **XVI. Recordkeeping**

- A. The recordkeeping requirements in this policy supersede the record keeping requirements set forth in [Policy 129 Records Retention and Disposal of Records](#).
- B. MTSU will retain the following records for a period of seven (7) years:
  - 1. Each Sexual Harassment investigation, including any determination regarding responsibility and any recording or transcript of any live hearing, any disciplinary sanctions imposed on the Respondent, and any remedies provided to the Complainant designed to restore or preserve equal access to MTSU's education program or activity;
  - 2. Any appeal and the result therefrom;
  - 3. Any informal resolution and the result therefrom;
  - 4. All materials used to train Title IX Coordinators, Investigators, Hearing Officers, decision-makers on appeal, and any person who facilitates an informal resolution process, will be publicly available on MTSU's website.

5. For each response to actual knowledge of Sexual Harassment, MTSU must create, and maintain for a period of seven (7) years, records of any actions, including any Supportive Measures, taken in response to a report or Formal Complaint of Sexual Harassment.
  - a. In each instance, MTSU must document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to MTSU's education program or activity.
  - b. If MTSU does not provide a Complainant with Supportive Measures, then it must document the reasons why such a response was not clearly unreasonable in light of the known circumstances.
  - c. The documentation of certain bases or measures does not limit MTSU in the future from providing additional explanations or detailing additional measures taken.

Forms: none.

Revisions: none.

Last Reviewed: July 2020.

References: MTSU Policies 10 Ethics and Code of Conduct; 26 Discrimination and Harassment Based on Protected Categories Other Than Sex; 27 Misconduct, Discrimination, and Harassment Based on Sex Including Pregnancy, Sexual Orientation, and Gender Identity/Expression; 129 Records Retention and Destruction of Records; 204 Tenure; 540 Student Conduct; 851 Disciplinary Policy for Administrative and Classified Employees; Title IX; 34 C.F.R. Part 109; T.C.A. §§ 4-5-303., 4-5-324.



**Middle Tennessee State University  
Board of Trustees**

**Audit and Compliance Committee**

**Action Item**

DATE: August 18, 2020

SUBJECT: **Annual Report for Audit and Consulting Services**

PRESENTER: Brenda Burkhart  
Chief Audit Executive

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**BACKGROUND INFORMATION:**

TCA 49-14-102 along with the MTSU Board of Trustees Bylaws and Policy on Board Committees requires an annual comprehensive report on the internal audit function be submitted for the Committee's review. The report is submitted for the Committee's review.

MTSU Policy 70, Internal Audit, Section VII.C. requires approval of the audit plan by the Audit and Compliance Committee. The Internal Audit Plan for Fiscal Year 2021 is included on page 6 of the annual report and is presented to the Committee for approval.





## **Audit and Consulting Services**

### **Annual Report Fiscal Year 2020**

Audit and Consulting Services  
Middle Tennessee State University  
Murfreesboro, TN 37132

**Audit and Consulting Services**  
Middle Tennessee State University  
1301 East Main Street  
Murfreesboro, TN 37132  
Office: 615-898-2914 • Fax: 615-904-8046



July 31, 2020

MTSU Board of Trustees  
Audit and Compliance Committee

and

Dr. Sidney A. McPhee, President  
Middle Tennessee State University  
1301 East Main Street  
Murfreesboro, TN 37132

Trustees and Dr. McPhee:

Enclosed is the annual report for Audit and Consulting Services for the 2020 fiscal year. An annual report of audit work is required by TCA 49-14-102 and the Bylaws and Policies of the MTSU Board of Trustees. The Board Committee policy requires a comprehensive report on the internal audit function to the Board through the Audit and Compliance Committee at a stated meeting. The report includes the status of the 2020 annual audit plan noting the audits completed, in progress, and scheduled but not completed.

The report also includes an update on the fraud awareness activities and investigations along with a report of the financial resources of Audit and Consulting Services.

This report fulfills the annual reporting requirements and provides information to the Board of Trustees concerning the 2020 audit efforts of Audit and Consulting Services. The report also includes the annual audit plan for the 2021 fiscal year. This report is intended solely for the internal use of Middle Tennessee State University and the MTSU Board of Trustees. It is not intended to be and should not be used for any other purpose.

Respectfully submitted,

A handwritten signature in black ink that reads "Brenda H. Burkhart".

Brenda H. Burkhart, CPA  
Chief Audit Executive

**Middle Tennessee State University  
Audit and Consulting Services  
Annual Report for Fiscal Year 2020**

**Introduction:**

TCA 49-14-102 and the Bylaws and Policies of the MTSU Board of Trustees requires an annual report of audit work. The Board Committee policy requires a comprehensive report on the internal audit function to the Board through the Audit and Compliance Committee (ACC) at a stated meeting.

**Audit Effort:**

Audit and Consulting Services tracks audit effort by type of project and by university division. The majority of audit effort was in required projects, investigations, and special requests/consulting within the following divisions: Governance, Athletics and Academic Affairs. Page two of the report includes details and charts of audit effort. The status of the 2020 audit plan is located on page three.

**Fraud Awareness:**

When allegations of improper or dishonest acts by an employee, outside contractor or vendor are received, an investigation is required. One new review was opened during the year. Two projects were administratively closed and four projects were delayed due to the interruption of COVID-19 to the campus work environment. The four projects in progress will be included on the FY 2021 audit plan. See page four for additional information.

**Resources:**

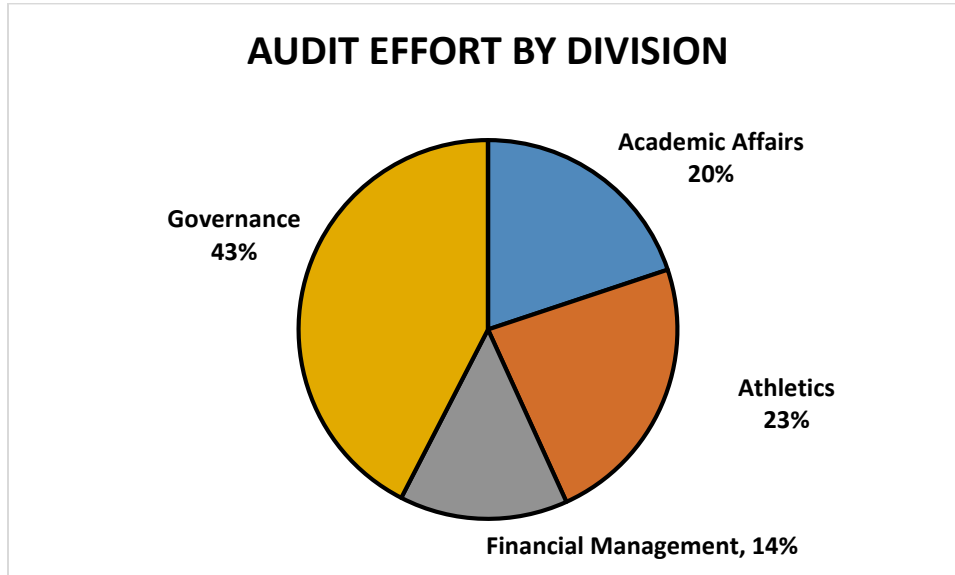
The current budget of \$446,464 is adequate to fulfill the current responsibilities. Details of the current budget and actual expenses for the past two years are located on page five.

**Planned Audit Efforts for 2021:**

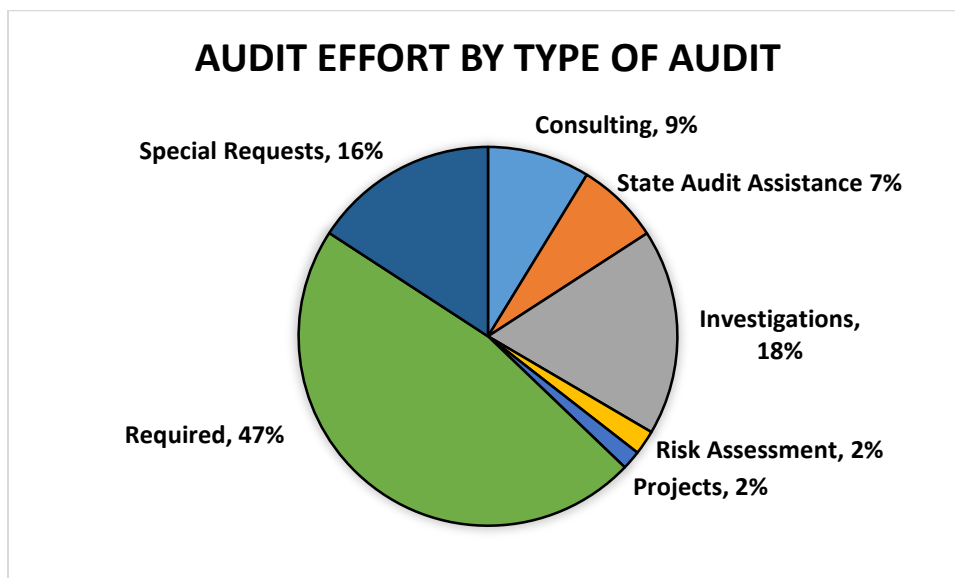
Along with the audits in progress and required audits, the planned audit effort for 2021 includes a review of the controls mitigating the risk areas of vendor provided services and PII (Personal Identifiable Information) Compliance. Four departmental/procedural reviews are also planned. The audit plan for 2021 is located on page six.

## AUDIT EFFORT

Audit and Consulting Services tracks audit effort by type of project and by university division as shown with the following charts. For the chart Audit Effort by Division, Governance includes the President's Division and general institutional support. The majority of audit effort (86%) focused on projects within Governance, Athletics and Academic Affairs.



The type of audit work performed is defined by the source of the request or purpose of the audit work. Required projects (47%) are the result of a third party request or agreement that an audit or review be performed. This audit effort included the annual audit of the President's Office which is required by state law and the Audit of Football Ticket Sales and Paid Attendance which is required by the National Collegiate Athletic Association (NCAA). The year-end reviews of inventory and cash counts are also included in this audit effort. Investigations represented 18% of the audit effort. Investigations are performed at the request of management or with the receipt of a hotline complaint of possible fraud, waste or abuse. Special requests were the reviews of the use of aircraft and the mobile production truck. Consulting (9%) represented efforts responding to general audit questions, assisting management with an audit concern and the Conflict of Interest Committee work.





**Middle Tennessee State University  
Status of Internal Audit Plan  
Fiscal Year Ended June 30, 2020  
as of June 30, 2020**

Type	Area	Audit Project	Current Status	Audit Results
R	FM	Year-End Inventory FY2019	Report Issued 10/31/2019	1 Recommendation
R	FM	Cash Counts FY2019	Memo to Management 9/26/19	No Reportable Issues
R	GV	Audit of President's Office	Report Issued 12/4/2019	No Reportable Issues
I	SS	INV1702	In Progress	
I	AA	INV1705	In Progress	
I	AA	INV1801	Draft Report	
I	AT	INV1904	In Progress	
I	FM	INV1905	Administratively Closed 12/20/19	No Reportable Issues
I	AA	INV2001	Administratively Closed 6/26/20	No Reportable Issues
R	AT	Football Attendance Fall 2019	Report Issued 2/6/2020	No Reportable Issues
F	GV	State Audit Assistance/Follow-Up	Project Throughout Year	n/a
C	GV	General Consultation	Project Throughout Year	n/a
R	FM	Cash Counts FY2020	Cancelled, due to remote work	n/a
R	FM	Year-End Inventory FY2020	In Progress	
P	GV	IIA - Self Assessment & QAR	In Progress	
S	AA	Use of Aircraft	Report Issued 2/20/2020	2 Recommendations
S	AA	Use of Mobile Production Truck	In Progress	
A	AA	Research Services Procedural Review	Scheduled	
A	SS	Financial Aid Procedural Review	Scheduled	
A	FM	Property Management Contract Review	Scheduled	

<p><b>Audit Types:</b>  A - Risk-Based (Assessed)  C - Consulting  F - Follow-up Review  I - Investigation  M - Management's Risk Assessment  P - Project (Ongoing or Recurring)  R - Required  S - Special Request</p>	<p><b>Area = University Division</b>  AA - Academic Affairs  AD - Advancement  AT - Athletics  FM - Financial Management  GV - Governance/Executive Office  IT - Information Technology  MC - Marketing and Communications  SS - Student Services</p>
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## FRAUD AWARENESS

The University is committed to the responsible stewardship of resources and is required by state law to provide a means by which employees, students or others may report suspected or known improper or dishonest acts. Audit and Consulting Services manages the reporting process by which students, employees, taxpayers or other citizens may confidentially report suspected illegal, improper, wasteful or fraudulent activity. (TCA 49-14-103)

The “Fraud Awareness” brochure is a communication tool given to new employees that explains the reporting expectations and options for any individual who suspects improper or dishonest acts involving university employees, outside contractors or vendors. The “Fraud Awareness” information is also located on the Audit and Consulting Services webpage and includes an on-line reporting form.

When Audit and Consulting Services receives allegations of improper or dishonest acts by an employee, outside contractor or vendor, it is required to conduct an investigation. The purpose of the investigation or review is to determine if the allegation or concern is substantiated or unsubstantiated and if there are any internal control weaknesses or risks that management should address. If the allegation or concern is substantiated and corrective action is needed, an audit report is issued. A review is administratively closed with a memo to the file if the concern is unsubstantiated or referred to management or there are no recommendations for corrective action.

Below is a summary of the reviews pertaining to concerns of possible improper or dishonest acts.

Reviews brought forward from prior year	5
New reviews opened during year	<u>1</u>
Projects in Progress During the Year	6
Less Administratively Closed	<u>(2)</u>
Reviews in Progress at June 30, 2020	<u><u>4</u></u>

In 2020, one new review of possible improper or dishonest acts was opened which is much less than the three year average of four reviews per year. New reviews for the past three years were: 5 in 2019, 2 in 2018; and 5 in 2017.

Two projects were administratively closed because the complaints were not substantiated as fraud, waste or abuse and there were no recommendations to improve the control environment. A part of the investigative work this fiscal year was following up and assisting the District Attorney’s office with the prosecution of the former international recruiter who pled guilty to two counts of attempted forgery and one count of attempted official misconduct. He made restitution of \$40,000 to the University and was placed on three years probation with the requirement to complete 100 hours of community service work and not have any contact with the MTSU campus.

The interruption of the campus work environment due to COVID-19 has delayed the completion of the other projects in progress. These projects will be included on the 2021 annual audit plan.

## RESOURCES

As defined in the MTSU Audit and Compliance Committee Charter, the Audit and Compliance Committee is responsible for ensuring Audit and Consulting Services has adequate resources in terms of staff and budget to effectively perform its responsibilities. The following is the estimated budget for 2020-2021 compared to the actual expenses of the prior two fiscal years.

	<b>Estimated Budget (1)</b>	<b>Actual Expenses</b>	<b>Actual Expenses</b>
	<b>2020-2021</b>	<b>2019-2020</b>	<b>2018-2019</b>
Salaries:			
Chief Audit Executive	\$ 105,643	\$ 105,643	\$ 104,996
Assistant Director	67,162	66,342	64,620
Internal Auditors, 2 Professionals	90,190	46,215	81,371
Support Staff	28,402	28,040	27,993
Longevity for Professional Staff	8,500	8,300	8,000
Benefits	123,484	120,306	146,730
<b>Total Salaries and Benefits</b>	<b>\$ 423,381</b>	<b>\$ 374,846</b>	<b>\$ 433,710</b>
Travel	15,500	700	10,540
Operating Expenses	7,583	3,521	4,431
<b>Total Budget/Expenses</b>	<b>\$ 446,464</b>	<b>\$ 379,067</b>	<b>\$ 448,681</b>

(1) The Estimated Budget for FY 2020-2021 is anticipated to be reduced by \$10,700 (3.38%) due to the financial impact of COVID-19. The anticipated reduction will reduce the travel budget by \$10,500 and the operating expenses budget by \$200. After the reduction, the travel budget will be \$5,000 and the operating expenses budget will be \$7,383. The budget will be finalized in October 2020.

The 2020-2021 budget for Audit and Consulting Services is adequate to fulfill the current responsibilities.

**Middle Tennessee State University  
Internal Audit Plan  
Fiscal Year Ended June 30, 2021  
as of July 31, 2020**

Type	Area	Audit Project	Current Status	Audit Results
R	FM	Year-End Inventory FY2020	In Progress	
R	GV	Audit of President's Office	In Progress	
I	SS	INV1702	In Progress	
I	AA	INV1705	Draft Report	
I	AA	INV1801	In Progress	
I	AT	INV1904	In Progress	
S	AA	Use of Mobile Production Truck	In Progress	
P	GV	IIA - Self Assessment & QAR	In Progress	
F	GV	State Audit Assistance/Follow-Up	Project Throughout Year	
C	GV	General Consultation/Risk Assessment	Project Throughout Year	
I	GV	Unscheduled Investigations	Scheduled	
R	AT	Football Attendance Fall 2020	Scheduled	
R	FM	Cash Counts FY2021	Scheduled	
R	FM	Year-End Inventory FY2021	Scheduled	
A	IT	Risk/Controls: Vendor Provided Services	Scheduled	
A	IT	Risk/Controls: PII Compliance	Scheduled	
A	MC	Marketing & Communications	Scheduled	
A	FM	Payroll	Scheduled	
A	AA	Research Services Procedural Review	Scheduled	
A	FM	Property Management Contract Review	Scheduled	

**Audit Types:**

A - Risk-Based (Assessed)  
 C - Consulting  
 F - Follow-up Review  
 I - Investigation  
 M - Management's Risk Assessment  
 P - Project (Ongoing or Recurring)  
 R - Required  
 S - Special Request

**Area = University Division**

AA - Academic Affairs  
 AD - Advancement  
 AT - Athletics  
 FM - Financial Management  
 GV - Governance/Executive Office  
 IT - Information Technology  
 MC - Marketing and Communications  
 SS - Student Services



**Middle Tennessee State University  
Board of Trustees**

**Audit and Compliance Committee  
Information Item**

DATE: August 18, 2020

SUBJECT: **Compliance and ERM Program  
Updates and Effectiveness**

PRESENTER: Gené Stephens  
Assistant Vice President  
Office of Compliance and Enterprise  
Risk Management

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**BACKGROUND INFORMATION:**

As part of the University's Compliance and Enterprise Risk Management programming, the following are updates in the areas of Records Management; Drug-Free Schools and Campuses Act Biennial Reporting; and the European Union General Data Protections Regulations ("EU GDPR").



## **Compliance and ERM Program** **Updates and Effectiveness**

### **Records Management**

The University continues to provide its annual Records Holding Report to the State's Records Management Division ("State RMD") by July 1, and continues to receive positive feedback from State RMD Director, Kevin Callaghan, regarding MTSU's work to comply with State requirements. The Records Holding Report ("Holdings Report") for this year was submitted on June 30, 2020 and included information on the University's records holdings (paper, electronic, and other record mediums), as well as the amount of records destroyed. The 2020 Holdings Report included data analytics, which compared the University's holdings from 2018 through 2020. The addition of the data analytics served as an enhancement to the overall Holdings Report.

A copy of the State RMD's email response to MTSU's Holdings Report is included as the last page in this tab of meeting materials.

### **Drug-Free Schools and Campuses Act Biennial Reporting**

The Department of Education ("DOE") requires institutions of higher education ("IHEs") to provide information and biennial reporting under the Drug-Free Schools and Campuses Act ("DFSCA") regarding its alcohol and drug ("AOD") prevention programs, activities, and policies pursuant to the DOE's General Administrative Regulations, Part 86, 34 CFR Part 86, Vol. 55, No. 159 (Aug. 16, 1990). The DFSCA biennial report must demonstrate that the University:

1. Provides annual notification to all employees and students, in writing, concerning the standards of conduct, appropriate sanctions, and health risks related to alcohol and drug prohibitions and prevention.
2. Provides a description of available treatment programs.
3. Maintains a methodology to distribute annual AOD notifications to all employees and students.
4. Prepares a biennial report on the effectiveness of its AOD prevention and education programs, as well as documents the consistency of AOD sanctions and enforcement.

The University's DFSCA biennial report for 2018 – 2020 was successfully completed, and has been posted to various University websites. The biennial report details MTSU's AOD prevention and education program; provides statistics related to enforcement from the Office of Student Conduct, Housing and Resident Life, and University Police; and additionally provides information on initiatives that help provide student support related to the connection between substance abuse and mental health.

### EU GDPR

The University's activity concerning GDPR continues to be monitored. Given the low numbers of EU students, as well as employment applicants, there is not a need to perform a data impact assessment under GDPR standards.

There has been, however, one request for data erasure in 2020 by an individual who received marketing information from the University. At this time, the individual has not yet confirmed whether or not they are an EU citizen; therefore, the review of this matter is still in process.



Email Response from State's Records Management Division for timely submission of MTSU's Holdings Report for 2020:

Wed 7/1/2020 7:31 AM

Good Morning Gené,

Thank you for turning in your records holding report so promptly. The information you have provided is excellent, thank you for the analytics. That level of detail further documents the amount of effort your institution is putting into compliance. Your team's efforts are a credit to MTSU. I will let you know if I have any questions.

I appreciate all the work you and your team continue to do in meeting and exceeding the recommended policies and procedures. I hope all of you have a great Independence Day holiday!

Kevin

Kevin F. Callaghan

Director

Records Management Division

Office of Tennessee Secretary of State Tre Hargett

312 Rosa L. Parks Avenue, 8th Floor

William R. Snodgrass Tower

Nashville, TN 37243

615-253-4566

This electronic mail may be subject to the Tennessee Public Records Act, Tenn. Code Ann. §10-7-503 *et seq.* Any reply to this email may also be subject to this act.

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**Middle Tennessee State University  
Board of Trustees**

**Audit and Compliance Committee  
Information Item**

DATE: August 18, 2020

SUBJECT: **Annual Compliance Trainings  
Effectiveness – FERPA, Ethics, and  
HIPAA**

PRESENTER: Gené Stephens  
Assistant Vice President  
Office of Compliance and Enterprise  
Risk Management

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**BACKGROUND INFORMATION:**

Annually, the Office of Compliance and Enterprise Risk Management (“CAERM office”) is responsible for disseminating mandatory training on the following:

1. Family Educational Rights and Privacy Act (“FERPA”) – applicable to all full-time, part-time, and student employees
2. Ethics – applicable to all full-time and part-time employees
3. Health Insurance Portability and Accountability Act of 1996 (HIPAA) – applicable to Health Services and Campus Pharmacy staff.

A supplemental, training on Fraud, Waste, and Abuse (“FWA”) Prevention was also developed to reiterate the University’s commitment to FWA prevention



and risk mitigation. The FERPA, Ethics, and HIPAA trainings continue to be distributed to employees during the Fall semester in the months of October and November. For 2020, the Ethics and FERPA trainings will be distributed in September due to changes in the academic calendar resulting from the COVID-19 pandemic.

As part of the compliance communications from the CAERM office, the following details the increases in employee training completions by yearly comparison:

<b>Compliance Video Training</b>	<b>2018 Employee Training Completions</b>	<b>2019 Employee Training Completions</b>	<b>Percentage Change</b>	<b>2020</b>
Ethics	752	1,260	68%	No data yet
FERPA	600	1,266	111%	No data yet
HIPAA	58	62	7%	No data yet

Finally, and in addition to the above increases in annual training completions by employees, the Health Services and Campus Pharmacy department continues to ensure the privacy of student health records, as well as HIPAA protected patient health information, with additional support from the Information Technology Division and the CAERM Office. The HIPAA compliance video training is also utilized by MTSU’s Speech Language and Hearing Clinic (“Clinic”) staff, as well as by student clinicians in preparation for their Clinic practicum work.





**Middle Tennessee State University  
Board of Trustees**

**Audit and Compliance Committee  
Informational Item**

DATE: August 18, 2020

SUBJECT: **DOJ Evaluation of Corporate  
Compliance Programs – 2020 Update**

PRESENTER: Gené Stephens  
Assistant Vice-President,  
Office of Compliance and Enterprise Risk  
Management

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**BACKGROUND INFORMATION:**

In June 2020, the United States Department of Justice (“DOJ”) issued additional guidance regarding its evaluation of corporate compliance programs. Specifically, the DOJ’s Justice Manual outlines factors for consideration in conducting investigations of corporations and agencies to determine if, at the time of any offense, the corporation or agency had an adequate and effective compliance program. From the 2020 guidance and notes from the Justice Manual, the following three questions are noted as “fundamental questions” in the DOJ’s assessment of an agency’s compliance program:

1. “Is the corporation’s compliance program well designed?”
2. “Is the program being applied earnestly and in good faith? In other words, is the program adequately resourced and empowered to function effectively?”
3. “Does the corporation’s compliance program work in practice?”

## Analysis and Applicability to MTSU

The following information provides answers to the DOJ's aforementioned questions regarding MTSU's compliance program and internal control system.



**MIDDLE TENNESSEE STATE UNIVERSITY**  
**Office of Compliance and Enterprise Risk Management**

University Compliance with the DOJ’s 2020 Justice Manual Questions

<b>DOJ Justice Manual Questions</b>	<b>Answer or Description of MTSU Internal Controls</b>	<b>Additional Comments</b>
<p>1. Is the Corporation’s compliance program well designed?</p>	<p><u>ANSWER:</u> Yes. The University’s Compliance Program is comprised of several elements and includes, but is not limited to, the following:</p> <ol style="list-style-type: none"> <li>a. Annual Risk Assessments.</li> <li>b. Policies and procedures, as well as a review process for new policies and/or updates to existing policies.</li> <li>c. Annual training on Ethics, FERPA, HIPAA, Title IX, Title VI, and Title VII.</li> <li>d. Communication on compliance; risk management; fraud/waste/abuse prevention; records management; cybersecurity; and other guidance.</li> <li>e. Investigation and review processes regarding the following: <ul style="list-style-type: none"> <li>• Title IX, EEO, Title VI, and Title VII (IEC office)</li> <li>• Ethics (Office of Compliance and ERM)</li> <li>• FERPA (Office of Compliance and ERM)</li> <li>• Athletic Coaching misconduct (Office of Compliance and ERM)</li> <li>• P-Card and PCI Compliance</li> <li>• Financial and Accounting audits (internal)</li> <li>• Other, special department-related reviews and/or investigations</li> <li>• Student Misconduct</li> <li>• Athletics financial accounting audits (internal)</li> </ul> </li> <li>f. Crisis management planning.</li> <li>g. Updates and communication from the University President on special initiatives, community values, and other University requirements, including enrollment and financial reporting.</li> </ol>	<p>The University has a system of checks and balances that provides oversight of key academic, student services, and operational areas, as well as provides communications on compliance topics to all employees. Management provides regular review of the University’s internal control system, and adjustments are made to the control system based upon: (i) emerging business needs; (ii) changes in federal and state regulations, mandates, legislation, and executive orders; (iii) global and/or national emergencies, such as the COVID-19 pandemic; (iv) state emergencies, such as the recent Tennessee tornadoes; and/or (v) adjustments in annual funding allocations and revenue.</p>

DOJ Justice Manual Questions	Answer or Description of MTSU Internal Controls	Additional Comments
<p>2. Is the program being applied earnestly and in good faith? In other words, is the program adequately resourced and empowered to function effectively?</p>	<p><u>ANSWER:</u> While the University’s compliance program has been developed, implemented, and is monitored and tested earnestly and in good faith, there is inadequate staffing resources to sustain the effectiveness of the compliance and enterprise risk management regulatory reporting and deliverables from the Office of Compliance and Enterprise Risk Management (“ERM”). Currently, the Office of Compliance and ERM (“CAERM Office”) consists of the following employees:</p> <ul style="list-style-type: none"> <li>• Assistant Vice President (FTE)</li> <li>• Temp Hourly (for the last two years)</li> </ul> <p>As state and federal regulatory requirements increase, together with annual reporting, as well as other compliance and investigatory deliverables that helps ensure the expansion and effectiveness of the University’s compliance and risk management programming, the current staffing model is not sustainable to continue meeting the ever-growing reporting demands and compliance monitoring. The addition of at least one full-time employee who would report solely to the Office of Compliance and ERM would assist with work capacity, delivery, sustainability, and monitoring of the compliance and risk management program. The following are some of the items monitored, contributed to, and/or managed by the CAERM Office:</p> <ul style="list-style-type: none"> <li>• FERPA compliance and investigations of student FERPA complaints</li> <li>• Ethics compliance training and investigations</li> <li>• Conflicts of Interests tracking and COI Committee Chair</li> <li>• Records Officer and Records Management monitoring, training, and process updating</li> <li>• Insurance, including a new, annual Critical Freezer/Asset List submission to the State</li> <li>• Auto Accident Tracking for State claims</li> <li>• UAS/Drone tracking and monitoring</li> <li>• HIPAA compliance training and monitoring</li> <li>• Drug Free Schools and Campuses Act Biennial Reporting</li> <li>• Annual Risk Assessments reporting</li> <li>• Annual Financial Integrity Act Report/Letter</li> <li>• Annual Compliance and Ethics event/program</li> <li>• Athletics Student-Athlete Complaint Resolution and Policy 90 Athletics Coaching Code of Conduct Training</li> <li>• Summer Camp Safety training (training video produced in 2020 in lieu of in-person training since camps were cancelled due to COVID-19)</li> <li>• Business and Finance Unit coordination for the 5<sup>th</sup> Year Interim SACSCOC Accreditation Report</li> <li>• EU GDPR Compliance monitoring</li> </ul>	<p>There is a shared commitment to the compliance and risk management program and internal control system by the University’s executive, senior, and middle management and staff. In addition, there is appropriate management oversight of the control system, as well as over compliance and risk management program activities. There remains, however, insufficient resources to sustain the current responsibilities of the CAERM Office without additional staffing, as well as cross-training of a full-time staff member.</p>

<b>DOJ Justice Manual Questions</b>	<b>Answer or Description of MTSU Internal Controls</b>	<b>Additional Comments</b>
3. Does the corporation's compliance program work in practice?	<u>ANSWER:</u> Yes; the University's compliance program works in practice. The University's internal control system and compliance programming (including risk management programming) includes continuous monitoring, annual testing, continuous review to proactively address issues; investigate misconduct; and cultivate a culture of compliance that is evidenced by University-wide procedures, policies, and favorable, zero-finding financial audit results.	The University's compliance program continues to be reviewed, improved, and adapted based on business needs, federal/state regulatory changes, and emerging risks, such as the COVID-19 pandemic.





**Middle Tennessee State University  
Board of Trustees**

**Audit and Compliance Committee**

**Action Item**

DATE: August 18, 2020

SUBJECT: **Risk Assessment Reporting**

PRESENTER: Gené Stephens  
Assistant Vice President  
Office of Compliance and Enterprise  
Risk Management

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**BACKGROUND INFORMATION:**

Section 9-18-104 of the Financial Integrity Act requires institutions of higher education to prepare and provide a management assessment of risk to the State of Tennessee's Commissioner of Finance and Administration and to the Comptroller of the Treasury by December 31 annually.

For 2020, the President's Division and the Information Technology Division performed, and provided, risk assessment reporting. In addition, a risk assessment report was completed detailing university-wide risk and control activities.

Similar to MTSU's risk assessment reporting of 2019, the risk assessment documents are designated as confidential and are discussed in the non-public executive session of the Committee. The risk assessment reports are presented to the Committee for approval prior to the reports' submission to the State, as required by law.