MIDDLE TENNESSEE STATE UNIVERSITY
POLICIES AND PROCEDURES MANUAL

POLICY NO: I:01:22
DATE: December 17, 1998
SUPERSEDES POLICY NO: I:01:22
DATE: November 5, 2001

SUBJECT: Harassment – Sexual or Racial
APPROVED: Sidney A. McPhee, President

I. Purpose

The purpose of this policy, as promulgated by TBR Guideline P-080, is to provide for the orderly resolution of charges of harassment at the University. Fair and prompt consideration shall be given to all charges of such harassment in accordance with the procedures set forth below. These procedures may be utilized by any employee, applicant for employment or enrollment, or student who believes he or she has been subjected to sexual or racial harassment or harassment based on other protected class status, i.e. age, color, national origin, religion, disability, veteran status; or harassment based on sexual orientation. Former employees or students may file complaints concerning conduct, which took place during the time of employment or enrollment provided the complaint is timely filed, and the conduct has a reasonable connection to the institution.

All faculty members, students and staff are subject to this guideline. Any faculty member, student or staff found to have violated this guideline by engaging in behavior constituting harassment will be subject to disciplinary action which may include dismissal, expulsion or termination, or other appropriate sanctions.

All faculty members, students and staff, particularly management and supervisory personnel, are responsible for taking reasonable and necessary action to prevent and discourage harassment. Conduct that could be in violation of federal, state, TBR and institutional policies and guidelines shall be promptly reported to the EO/AA Director or Assistant Dean of Student Affairs and Mediation Services as required hereunder. Such reporting should occur when information concerning a complaint is received formally or informally.

Supervisory personnel shall discuss the subject regularly in their staff meetings, insure that employees have access to copies of the MTSU policy & brochure, and provide to the EO/AA Director documentation on all activities conducted within their areas.

II. General Statement

Sexual and racial harassment have specifically been held to constitute forms of discrimination prohibited by Title VI and Title VII of the Civil Rights Act of 1964, as amended, and Title IX of the Education Amendments of 1972. In addition to sex and race, age, color, national origin, religion, disability, and veteran status have also been designated as protected classes under Federal and State laws. Failure to properly investigate and address claims of harassment based on protected class status could subject the Institution to liability and penalty under the relevant Federal and State laws.
A. Sexual Harassment

Generally, sexual harassment may be defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when one of the following criteria is met:

1. submission to such conduct is made either explicitly or implicitly a term or condition of the individual’s employment or of the individual’s status in a program, course or activity.

2. submission to or rejection of such conduct by an individual is used as a basis for employment decisions, a criterion for evaluation, or a basis for academic or other decisions affecting such individual; or

3. such conduct has the purpose or effect of unreasonably interfering with an individual’s work performance or educational experience or creating an intimidating, hostile or offensive work or educational environment.

Sexual Harassment can take many forms, but most sexual harassment falls into three categories: verbal, visual, and physical. Some examples of behavior that may constitute sexual harassment are:

- Making employment, educational, or other decisions based on acceptance or rejection of sexual advances.
- Promising a work-related benefit, or a grade in return for sexual favors.
- Suggestive or inappropriate communications, e-mail, notes, letters, or other written materials displaying objects or pictures, which are sexual in nature that would create hostile or offensive work or living environments.
- Sexual innuendoes, comments, and remarks about a person’s clothing, body or activities.
- Suggestive or insulting sounds.
- Whistling in a suggestive manner.
- Humor and jokes about sex that denigrate men or women.
- Sexual propositions, invitations, or pressure for sexual activity.
- Use in the classroom of sexual jokes, stories, remarks or images in no way germane to the subject matter of the class.
- Implied or overt sexual threats.
- Suggestive or obscene gestures.
- Patting, pinching, and other inappropriate touching.
- Unnecessary touching or brushing against the body.
- Attempted or actual kissing or fondling.
- Coerced sexual intercourse.
- Sexual Assault.

The examples listed above are not exclusive, but simply represent types of conduct that may constitute sexual harassment. The brochure titled “No Sexual Harassment at MTSU” provides additional examples.
Not every act that might be offensive to an individual or a group will be considered harassment. Whether the alleged conduct constitutes sexual harassment depends upon the record as a whole and the totality of the circumstances, such as the nature of sexual advances and/or the context within which the alleged incident occurred. Harassment does not include verbal expressions or written material that is relevant and appropriately related to course subject matter or curriculum.

Please note that stalking and sexual assaults may be criminal acts and as such, investigation and processing by the criminal justice system, local police, campus security, and crisis intervention centers may supersede or occur in addition to the process developed under this policy.

B. **Racial Harassment**

Generally, racial harassment is defined as any person’s conduct, which unreasonably interferes with an employee’s or student’s status or performance by creating an intimidating, hostile, or offensive working or educational environment. Harassment on the basis of race, color, or national origin, includes offensive or demeaning treatment of an individual, where such treatment is based on prejudiced stereotypes of a group to which that individual may belong. It includes, but is not limited to, objectionable epithets, threatened or actual physical harm or abuse, or other intimidating or insulting conduct directed against the individual because of his/her race, color, or national origin. Title VII requires employers to take prompt action to prevent bigots from expressing their opinions in a way which abuses or offends their coworkers.

III. **Consensual Relationships**

Intimate relationships between supervisors and their subordinates, and between faculty members and students are strongly discouraged due to the inherent inequality of power in such situations. These relationships could lead to undue favoritism or the perception of undue favoritism, abuse of power, compromised judgment or impaired objectivity.

Engaging in a consensual relationship with a student over whom the faculty member has either grading, supervisory, or other evaluative authority (i.e., member of dissertation committee, thesis director, etc.) constitutes a conflict of interest. The faculty member must take steps to remove the conflict by assigning a different supervisor to the student; resigning from the student’s academic committees; and/or by terminating the relationship at least while the student is in his/her class. Likewise, it is a conflict of interest for a supervisor to engage in a consensual relationship with a subordinate over whom he or she has evaluative or supervisory authority. The supervisor must take action to resolve the conflict of interest by, for example, assigning another individual to supervise and/or evaluate the subordinate.

IV. **Procedures**

A. **General**

1. The following procedures are intended to protect the rights of the aggrieved party (hereinafter, “the complainant”) as well as the party against whom an allegation of harassment is lodged (hereinafter “the respondent”) as required by state and
federal laws. Each complaint shall be properly and promptly investigated and, when warranted, appropriated disciplinary action taken against the respondent.

2. The Legal Counsel shall always be consulted prior to investigation. References to “Legal Counsel” shall mean either the Office of General Counsel or on-campus legal counsel, as appropriate.

3. In situations that require immediate action because of safety or other concerns, the institution may take any appropriate action e.g., suspension with pay, pending the outcome of the investigation. Legal Counsel shall be contacted before any immediate action is taken.

4. Each employee, applicant for employment and student shall be notified of the name, office, and telephone number of the designated investigators responsible for assuring compliance with this policy, Board policy, and federal law.

The Director of Equal Opportunity and Affirmative Action, who is also the Title IX Officer, shall investigate complaints against employees. The Assistant Dean of Judicial Affairs & Mediation Services shall investigate complaints against students. Hereinafter, the term “investigator” shall be used to reference these individuals. (After consultation with Legal Counsel, the Director and Assistant Dean may designate an individual(s) to conduct the investigation or give assistance).

B. Filing Complaints

1. Any current or former student, applicant for employment or current or former employee who believes he or she has been subjected to harassment or who believes that he or she has observed harassment taking place at MTSU shall present the complaint to the Director of Equal Opportunity and Affirmative Action unless the complaint is against a student. If the complaint is against a student, then the complaint should be presented to the Assistant Dean of Judicial Affairs and Mediation Services.

2. Complaints must be brought within 365 days of the last incident of harassment. Complaints brought after that time period will not be pursued absent extraordinary circumstances. The determination of whether the complaint was timely or whether extraordinary circumstances exist to extend the complaint period must be made in conjunction with Legal Counsel.

3. Every attempt will be made to get the complainant to provide the complaint in writing. The complaint shall include the circumstances giving rise to the complaint, the dates of the alleged occurrences, and names of witnesses, if any. (Appendix A is a sample complaint form). The complainant shall sign the complaint. However, when the complainant refuses to provide or sign a written complaint the matter will still be investigated and appropriate action taken. Complaints made anonymously or by a third party shall also be investigated to the extent possible.

4. If the complaint does not rise to the level of harassment, the complaint may be dismissed without further investigation after consultation with Legal Counsel. The
Complainant shall be informed of other available processes such as the employee grievance/complaint process, or a student non-academic complaint process.

C. Investigation

1. The Legal Counsel shall be notified of the complaint whether written or verbal, as soon as possible after it is brought to the attention of the Investigator, and the investigation will be under the direction of the Legal Counsel. All investigatory notes and documents shall be attorney work product. The investigator shall notify the President that an investigation is being initiated.

2. When the allegation is against the EO/AA/Title IX Officer or the Associate Dean of Judicial Affairs & Mediation Services, it shall be presented to the President who will identify an individual who has been trained to investigate such complaints to carry out the responsibilities assigned pursuant to this guideline.

3. When the respondent is a student, the Investigator will investigate the complaint in compliance with the procedures outlined in this policy. If a finding of violation is made, any resulting disciplinary action will be undertaken in compliance with the institution's student disciplinary procedure.

4. When the respondent is a student, all documentation shall be subject to the provisions and protections of the Family Educational Rights and Privacy Act (FERPA).

5. In consultation with and under the direction of Legal Counsel, the Investigator shall conduct an investigation of the complaint. The purpose of the investigation is to establish whether there has been a violation of the guideline. In conducting the investigation the Investigator may interview the Complainant, the Respondent, and other persons believed to have factual knowledge related to the investigation.

6. To the extent possible, the investigation will be conducted in such a manner to protect the confidentiality of both parties. However, the Complainant shall be informed that the institution has an obligation to address harassment and that, in order to conduct an effective investigation, complete confidentiality cannot be guaranteed. Information may need to be revealed to the Respondent and to potential witnesses. However, information about the complaint shall be shared only with those who have a need to know about it. A Complainant will be informed that if he or she wants to speak privately and in confidence about harassment, he or she may wish to consult with a social worker, counselor, therapist or member of the clergy who is permitted, by law, to assure greater confidentiality. Additionally, the Complainant will be given assurances that measures will be taken against the Respondent should there be retaliation against him or her. Retaliation is prohibited and should be reported to the investigator immediately.

7. The investigator shall notify in writing the Respondent within five (5) working days of receipt of the complaint. The Respondent shall respond in writing to the complaint within five (5) working days of notification. The Respondent should be notified that any retaliation against the Complainant is strictly prohibited regardless
of the outcome of the investigation and may, in itself, be grounds for disciplinary action.

8. The Investigator shall meet with both the Complainant and the Respondent individually for the purpose of resolving the complaint informally. If informal resolution is successful in resolving the complaint, a report of such, having first been reviewed and approved by Legal Counsel, shall be submitted to the President.

9. If informal resolution is unsuccessful, the Investigator shall draft a report summarizing the investigation, which shall be sent to Legal Counsel for review. After review and approval by Legal Counsel, the report shall be submitted to the President and the Complainant and the Respondent within twenty (20) working days following receipt of the complaint. In rare situations where more than 20 working days is needed to complete the investigation, such as difficulty in locating a necessary witness, or complexity of the complaint, additional time may be taken, but only following notice to Legal Counsel and notice to the Complainant.

Each report shall outline the basis of the complaint, including the dates of the alleged occurrences, the response of the Respondent, the findings of the Investigator, all attempts to resolve the complaint informally, a determination of whether there was a violation of the guideline, and recommendations regarding disposition of the complaint. No working papers, statements, etc. generated in the investigation should be attached to the report to the President.

10. If after investigation, there is insufficient evidence to corroborate the complaint or, in any situation in which the Complainant refuses to cooperate in the investigation, it may be appropriate to discuss the complaint with the Respondent, informing him or her that he or she is not being accused of a policy violation, but that the conduct alleged, had it been substantiated, could be found to violate this policy. Any investigation and subsequent discussion shall be documented and a report submitted as set forth in this procedure. It shall also be noted that conduct, which does not rise to the level of actionable harassment may, nevertheless, provide a basis for disciplinary action against the Respondent.

11. The President shall review the Investigator's report, make a final determination as to whether a violation has occurred and determine what the appropriate resolution should be. This determination shall be in writing, with copies provided to the Complainant and the Respondent.

12. If the investigation reveals evidence that a violation of the guideline has occurred, the President may meet with the Respondent and/or the Complainant and attempt to resolve the problem by agreement. This shall be done in consultations with Legal Counsel. Appropriate steps shall be taken to ensure that the harassment will not reoccur.

13. If a violation of this guideline is determined to have occurred, the Respondent shall be advised of his/her right to a hearing pursuant to the procedures set forth below.

14. After completion of the investigation and any subsequent disciplinary proceedings, all documentation shall be forwarded to Legal Counsel. However, the President's
determination, the Investigator’s report and documentation of any disciplinary action taken against the Respondent should be placed in a file maintained on campus. This file shall be maintained in a location designated by the President.

15. A complaint found to have been intentionally dishonest or maliciously made, will subject the Complainant to appropriate disciplinary action.

D. Hearing

1. The Respondent must file the request for a hearing within ten (10) working days following receipt of the President’s determination.

2. If the Respondent requests a hearing, he/she shall be advised of the established institutional procedures available for resolution of the matter in question which will generally be the procedure for the hearing of a grievance before a grievance committee.

3. The grievance hearing procedures shall include the following minimal requirements:

   a. Notice to the Respondent of the hearing, which must include a summary of the facts that form the basis of the violation; the date, time and place of the hearing; and, the rights afforded the Respondent during the hearing process.

   b. The right of the Respondent to present his or her case.

   c. The right of the Respondent to be accompanied by an advisor who may assist the Respondent but may not advocate on his or her behalf.

   d. The right of the Respondent to call witnesses in his or her behalf.

   e. The right of the Respondent to confront and cross-examine witnesses against him/her.

4. In the following situations the Respondent must be given the option of either an institutional hearing, or of having the hearing held pursuant to the Tennessee Uniform Administrative Procedures Act (TUAPA):

   a. The Respondent is a support staff or faculty employee whom the President has determined should be suspended without pay, demoted, or terminated; or,

   b. The Respondent is a student whom the President has determined should be suspended or expelled.

   c. The election to utilize either hearing process (institutional or TUAPA) must be in writing, signed by the Respondent, and must expressly waive the option not selected.
If the Respondent elects to be heard, Legal Counsel shall be notified immediately.

5. When a complaint involves a tenured faculty member, the same informal and formal procedures set out above shall be utilized. Tenured faculty members shall have the same right to elect hearing procedures as set out in this section. However, where the investigation results in a finding that the harassment policy was violated and the president concurs with that finding and determines that procedures pursuant to MTSU Policy II:01:05A should be undertaken in consideration of the termination of a tenured faculty member, the matter will then proceed directly to a hearing under MTSU Policy II:01:05A for termination of tenure.
HARASSMENT ALLEGATION FORM

Date: 

Complainant: 

Address: 

Phone: (home) (work) 

Name(s) of person(s) accused of wrong doing: 

Describe all actions of person(s) named above. Be as detailed as possible, include the date, time and place of each event(s) or conduct involved. Attach additional pages, if needed.

What effect has this had on you? 

Names of witnesses to the above-described events. Include phone number(s), if known. 

Names of anyone with whom you discussed the above-described events. Include phone number, if known. 

How would you like this matter resolved? 

Complainant Signature