25 Equal Opportunity, Affirmative Action, and Nondiscrimination

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. Statement of Nondiscrimination

It is the intent of Middle Tennessee State University (MTSU or University) to fully comply with the applicable provisions of federal and state civil rights laws, including, but not limited to, Executive Order 11246, as amended; the Rehabilitation Act of 1973, as amended; the Americans with Disabilities Act of 1990, as amended; the Vietnam Era Veterans Readjustment Act of 1974, as amended; the Equal Pay Act of 1963, as amended; Titles VI and VII of the Civil Rights Act of 1964, as amended; Title IX of the Educational Amendments of 1972, as amended; the Age Discrimination in Employment Act of 1967; the Age Discrimination Act of 1975; the Pregnancy Discrimination Act; the Genetic Information Nondiscrimination Act of 2008; Section 485(f) of the HEA, as amended by Section 304 of the Violence Against Women Reauthorization Act of 2013, the regulations implementing these Acts found at 34 CFR § 668.41, §668.46, and Appendix A to Subpart D of Part 668 and regulations promulgated pursuant thereto.

MTSU will promote equal opportunity for all persons without regard to race, color, religion, creed, ethnic or national origin, sex (including pregnancy), sexual orientation, gender identity/expression, disability, age (as applicable), status as a protected veteran, genetic information, and any other legally protected class. In doing so, MTSU affirms that it will not tolerate discrimination against any employee or applicant for employment and will not subject any student to discrimination or harassment under any educational program and no student shall be discriminatorily excluded from participation nor denied the benefits of any educational program on the basis of any of the protected categories listed above.

II. Procedures to Address Claims of Discrimination or Harassment

Because different legal requirements apply to claims of discrimination and harassment, depending on the protected category claimed to have been violated, separate policies describe the different procedures applicable to claims based on particular protected categories.
A. Allegations of discrimination and harassment based on sex (including pregnancy), sexual orientation, gender identity/expression, and sexual misconduct will be addressed pursuant to the procedures set forth in Policies 27 Misconduct, Discrimination and Harassment Based on Sex Including Pregnancy, Sexual Orientation, and Gender Identity/Expression and 29 Title IX Compliance.

B. Allegations of discrimination and harassment based on categories other than sex, sexual orientation, and gender identity/expression (for example, harassment based on race or disability status) will be addressed pursuant to the procedures set forth in Policy 26 Discrimination and Harassment based on Protected Categories other than Sex.

Complaints alleging violations of discrimination and harassment policies may be filed and will be adjudicated pursuant to the procedures set forth in the applicable policy.

Complaints filed with any external agency, such as the Equal Employment Opportunity Commission, the Office for Civil Rights, or the Tennessee Human Rights Commission, must be forwarded to the Office of the University Counsel once received. This office will coordinate and submit a response on behalf of the University.

III. Statement of Policy

In accordance with the statement of nondiscrimination and letter of commitment from the President, set forth in Section II. of the Affirmative Action Plan, MTSU shall not engage in practices which would discriminate against any individual or group for reasons of race, sex, sexual orientation, gender identity/expression, age (as applicable), color, religion, creed, ethnic or national origin, disability, status as a covered veteran, or genetic information. MTSU specifically finds that diversity of students, faculty, administrators, and staff is a crucial element of the educational process and reaffirms its commitment to enhancing education through affirmative action to increase diversity at all levels.

MTSU will take affirmative action to ensure that applicants for employment and employees are treated in a nondiscriminatory manner. Such action shall include, but not be limited to:

A. Making employment decisions which further the principle of equal opportunity and affirmative action;

B. Recruiting, hiring, training, and promoting persons in all job titles, without regard to any of the foregoing prohibited factors;

C. Ensuring that promotion decisions are in accord with principles of equal opportunity and affirmative action by imposing only valid requirements for job, educational, and other opportunities; and,
D. Ensuring that all employment decisions are implemented without prohibited discrimination.

Similarly, in compliance with Title IX of the Educational Amendments of 1972, as amended, MTSU shall not, on the basis of sex, subject any student to discrimination under any educational program. No student shall be discriminatorily excluded from participation in, or denied the benefits of, any educational program on the basis of a protected status.

IV. Implementation

A. Administrative Responsibility

The President of MTSU has appointed IEC as the area responsible for developing and implementing the University’s equal opportunity and affirmative action program and for ensuring fair practices in employment and education.

Pursuant to this appointment, IEC shall:

1. Ensure that plans are prepared and administered effectively within the time frame established.

2. Promote the equal opportunity program and affirmative action plan and ensure compliance with federal, state, and local laws and statutes, and University policies.

3. Receive and investigate complaints alleging violation of federal, state, or local statutes, or University policies that provide protection from discrimination, harassment, and retaliation on the bases of race, color, religion, creed, ethnic or national origin, sex (including pregnancy), sexual orientation, gender identity/expression, disability, age (as applicable), status as a protected veteran, genetic information, and any other legally protected class.

4. Assess the effectiveness of the program and recommend improvements.

5. Ensure that affirmative action plans are developed annually, and implemented as a means of aggressively pursuing the principles of equal employment opportunity.

6. Ensure that affirmative action goals and timetables are developed to correct problem areas and situations contributing to the under-utilization, under-representation, or inequitable treatment of protected class employees.

7. Provide positive leadership in the implementation of affirmative action programs on the campus and ensure that appropriate attention is devoted to the program in staff and faculty meetings. This shall include informing all supervisors that their performance evaluation will include an assessment of the effectiveness of their
participation in the equal opportunity programs and affirmative action plan in compliance with Policy 810 Performance Evaluation Reviews.

8. Gather and report data related to the equal opportunity program and affirmative action plan.

9. Ensure that policies and procedures are implemented to address all forms of harassment, including a procedure to receive and investigate complaints and recommend necessary action to the appropriate decision-maker.

10. Develop and implement educational programs regarding all types of harassment.

B. Supervisory Responsibility. Each Vice President and other supervisory personnel shall:

1. Disseminate this policy to the employees in the offices and operations for which he/she has immediate responsibility.

2. Discuss this and other related policies directly with employees, to answer questions about them, to support them, and to urge support and cooperation by employees.

3. Seek the assistance of IEC as necessary.

V. Plan for Affirmative Action

The affirmative action plan is designed to promote and ensure equal opportunity at MTSU. Its goal is to ensure additional efforts to recruit, employ, and promote qualified members of groups and persons formerly excluded, even where exclusion cannot be traced to particular discriminatory actions on the part of the employer. Further, it is the intent of the affirmative action plan to overcome the effects of systematic institutional forms of exclusion and discrimination, which in practice tend to perpetuate the status quo. This plan requires that MTSU determine the under-utilization of individuals of color and women, set goals and timetables for remedy of under-utilization of same, and describe plans and procedures for correcting said under-utilization of underrepresented individuals (persons of color protected by law) and women. People of color are defined for this purpose by the Department of Labor as Black/African American, Hispanic/Latino, Asian/Pacific Islander, American Indian/Alaskan Native and two (2) or more races.

Under-utilization, for the purpose of this plan, is defined as "having fewer women or people of color in a particular job than would reasonably be expected by their availability." Goals will be established considering availability and the results of the utilization analysis. The University shall adopt the whole person measure in compliance with regulations of the Office of Federal Contract Compliance Programs (OFCCP). Specifically, percentage goals will be established by EEO-6 category and job group. Goals and objectives by organizational unit shall be established to correct identifiable deficiencies. Goals by organizational unit shall refer to action-oriented
efforts rather than percentage goals. Where problem areas are identified by organizational units, the affirmative action plan shall include a description of the efforts which the University has taken or will take to correct those problem areas in accordance with OFCCP requirement 41 CFR 60-2.13(d).

Under-representation, for purposes of this plan, is defined as having fewer individuals of color or females in a particular section of the contractor’s work force, (i.e., department, job title, etc.) than would be expected in terms of their overall representation in the contractor’s work force or relevant sector of that work force.

Utilization Analyses

A. An analysis of the utilization of minorities and women will be performed. This analysis will include, but not be limited to, the following:

1. Ensuring that the EEO-6 Report is completed for all categories of employees (executive/administrative/managerial, faculty, professional/non-faculty, clerical, technical/paraprofessional, skilled crafts, service maintenance).

2. Considering the number of women and individuals of color employed by EEO-6 category and job group and the reasons for any under-utilization.

3. Comparing, as necessary, the salaries and wages of men and women by job classification.

B. The following factors must be considered in establishing goals:

1. The percentage of individuals of color or women with requisite skills in the reasonable recruitment area, where "reasonable recruitment area" refers to the geographical area from which the contractor usually seeks, or reasonably could seek, workers to fill the positions in question; and

2. The percentage of individuals of color or women among those promotable, transferable, and trainable within the contractor's organization, where "trainable" refers to employees who could, with appropriate training, become promotable or transferable within the AAP year.

C. In compliance with Title 41, Chapter 60 of the Code of Federal Regulations, MTSU will undertake one (1) or both of the following steps:

1. Determine which job groups are "feeder pools" for the job group in question. The feeder pools are job groups from which individuals are promoted.
2. Ascertain which employees could be promoted or transferred with appropriate training.

D. Distribution of Affirmative Action Plan. Copies of the affirmative action plan are distributed to Academic Affairs, Human Resources, the President’s Office (kept in IEC), and made available to the public in the University library. Each College Dean also receives the University data, as well as their specific college and department data.

VI. Personnel Action, Policies, and Procedures

The University will establish in reasonable detail and make available upon request the standards and procedures which govern all employment practices in the operation of the institution. Included in these standards and procedures shall be policies relating to the following:

A. Recruitment, Assignment, Transfer, and Promotion

1. Position announcements shall be distributed for consideration by all interested individuals. Announcements shall indicate the duties, responsibilities, and authorities of the position and the minimum qualifications needed by the applicant. Announcements shall carry a filing date, the method of filing an application, and the person to whom the application is to be made.

2. Recruitment literature and vacancy announcements shall carry clear statements that the University is an equal opportunity/affirmative action employer and that positions are open to all applicants unless there is a bona fide occupational qualification requirement.

3. Recruitment literature and vacancy announcements shall be sent to all recognized sources of candidates according to the type of position and in ways designed to solicit and encourage applications from qualified applicants who are female and/or individuals of color.

4. Recruitment sources and advertising media utilized shall include organizations and community agencies related to female and/or individuals of color. Each applicant’s qualifications shall be evaluated by comparing him/her with realistic job standards developed on the basis of work requirement.

5. For professional positions such factors as education, professional experience, scholarly achievement, leadership ability, understanding of problems with which the position is to deal, demonstrated drive, tact, and initiative would be considered.

6. For non-professional positions such factors as education, experience, and demonstrated ability will be considered, and appropriate skills tests will be utilized.
7. The receipt and disposition of all applications shall be recorded, and all applicants shall be informed as to when their application will become inactive.

8. Employee qualifications shall be evaluated against position requirements. Consideration shall be given to past performance and recommendations of colleagues and others in a position to evaluate potential performance.

9. All personnel involved in recruiting, screening, selection, and promotion of employees shall be carefully selected and trained to ensure elimination of bias in all personnel actions.

10. If the use of any tests other than skills tests is contemplated in evaluating applicants or employees, they must be validated by a professional psychometrist prior to use as a screening device.

B. Compensation

1. Faculty, Administrative, and Professional Staff: Faculty salaries shall be determined by earned degrees, experience, academic rank, and other appropriate factors. Administrative and Professional staff salaries shall be determined by factors such as job responsibilities, level of training and experience, and demonstrated effectiveness.

2. Classified Staff: Job classifications and salary schedules will be established for clerical and support positions. The appropriate classifications and salaries shall be applied uniformly and equitably.

3. The average salaries of males and females within the same job classification shall be compared, and any noticeable discrepancies shall be analyzed to determine the reasons therefore. If differences cannot be accounted for in terms of relative merit and/or seniority, immediate action shall be taken to correct the discrepancy.

C. Training

1. When appropriate, training shall be provided to enable University personnel to increase their skill levels for more responsible positions. The University shall develop formal training programs to aid in the advancement of personnel.

2. The University shall consider the degree to which on-the-job training can be administered to individuals of color and women in job categories wherein they are under-utilized, and where feasible, shall institute such training as a means of providing a greater opportunity for advancement.
D. Communication

1. Official equal opportunity signs shall be posted at appropriate places on campus and will be kept current.

2. The equal opportunity/affirmative action statement shall be placed on all appropriate University documents, including, but not limited to, stationary, bulletins, newsletters, contracts, purchase orders, advertisements, graduate and undergraduate catalogs, faculty, staff, and student handbooks, etc.

3. Recruitment sources, organizations related to individuals of color and/or females, community agencies, and community leaders shall be notified periodically and in writing of the University policy on equal opportunity.

4. The equal opportunity/affirmative action policy shall be distributed to all employees of the University and discussed in orientation programs.

5. Equal opportunity/affirmative action shall be a topic of regular discussion by managers at staff meetings.

E. Other Personnel Actions. All other personnel actions, i.e., discipline, discharge, layoff, demotion, etc., shall be conducted indiscriminately. The following criteria will be established and applied without prohibited discrimination:

1. testing criteria;

2. evaluation criteria;

3. professional qualifications (degrees, experience, etc.); and

4. criteria for promotion and tenure.

VII. Sexual Orientation and Gender Identity/Expression

It is the policy of MTSU that neither its students nor its employees be discriminated against on the basis of that individual’s sexual orientation or gender identity/expression. Such a policy helps ensure that only relevant factors are considered, and that equitable and consistent standards of conduct and performance will be applied. For the purpose of this policy, sexual orientation concerns the emotional, romantic, sexual, or affectional attraction to members of the same sex, opposite sex, or both sexes. Gender identity/expression concerns how an individual perceives his or her own gender, which may or may not be consistent with his or her anatomic sex or gender role. Any individual who has a discrimination complaint based upon his or her sexual orientation or gender identity/expression should follow the procedures set forth in Section II. above.
This policy shall not be construed to (1) infringe upon the free exchange of ideas essential to the academic environment, (2) limit the freedom of religious association, or (3) establish a duty to engage in affirmative action measures on the basis of sexual orientation or gender identity/expression. Further, this policy shall not be construed to require the compliance of external government agencies, University programs governed by external government agencies, in which nondiscrimination does not include sexual orientation (i.e., ROTC), or programs that discriminate as a matter of policy. Notwithstanding the language set forth in this policy, eligibility of employees for employment benefits is determined by the laws and regulations of the State of Tennessee, and is not affected by this policy.

Forms: none.

Revisions: June 5, 2017 (original); _____, 2020.

Last Reviewed: __________ 2020.

References: Executive Order 11246; Rehabilitation Act of 1973; Americans with Disabilities Act of 1990; Vietnam Era Veterans Readjustment Act of 1974; Equal Pay Act of 1963; Age Discrimination in Employment Act of 1967; Age Discrimination Act of 1975; Pregnancy Discrimination Act; Civil Rights Act of 1964; Title IX of the Education Amendments; Policies 26 Discrimination and Harassment Based on Categories Other than Sex; 27 Misconduct, Discrimination, and Harassment Based on Sex including Pregnancy, Sexual Orientation, and Gender Identity/Expression; 29 Title IX Compliance; 810 Performance Evaluation Reviews.