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Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing (Tenn. Code Ann. § 4-5-205).

Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).

Agency/Board/Commission: Middle Tennessee State University
Division:
Contact Person: James C. Floyd, University Counsel and Board Secretary
Address: 1301 E. Main Street, CAB 209, Murfreesboro, TN
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Phone: 615-898-2025
Email: James.floyd@mtsu.edu

Revision Type (check all that apply):

☒ Amendment
☐ New
☐ Repeal

Rule(s) (**ALL** chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that **ALL** new rule and repealed rule numbers are listed in the chart below. Please enter only **ONE** Rule Number/Rule Title per row.)

Chapter Number	Chapter Title
0240-07-06	Title IX Compliance
Rule Number	Rule Title
0240-07-06-.01	Definitions

Rules of
Middle Tennessee State University

Chapter 0240-07-06
Title IX Compliance

Amendment

Rule 0240-07-06-.01 is amended by adding paragraph (4) so that as amended, the new paragraphs shall read:

- (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) 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.
- (5) 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.
- (6) 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.
- (7) 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).
- (8) Party: either complainant or respondent. References in this rule to the plural "parties" includes complainant and respondent.
- (9) 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.
- (10) 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.

(11) 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.

(12) 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).

* If a roll-call vote was necessary, the vote by the Agency on these rulemaking hearing rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
J.B. Baker	X				
Tom Boyd	X				
Rick Cottle	X				
Pete DeLay	X				
Darrell Freeman, Sr.	X				
Joey Jacobs	X				
Christine Karbowiak	X				
Stephen Smith	X				
Pamela Wright	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Board on 9/14/2021, and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 7/15/2021

Rulemaking Hearing(s) Conducted on: (add more dates). 9/14/2021

Date: 12/7/2021

Signature: 


Name of Officer: James C. Floyd

Title of Officer: University Counsel and Board Secretary

Agency/Board/Commission: Middle Tennessee State University

Rule Chapter Number(s): 0240-07-06 Title IX Compliance

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.


Herbert H. Slatery III
Attorney General and Reporter
12/13/2021
Date

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Secretary of State
Division of Publications

Filed with the Department of State on: 2/8/2022

Effective on: 5/9/2022


Tre Hargett
Secretary of State

Public Hearing Comments

One copy of a document that satisfies T.C.A. § 4-5-222 must accompany the filing.

MTSU received no public comments about this rule amendment.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process, all agencies shall conduct a review of whether a proposed rule or rule affects small business.

The rule is not anticipated to have an impact on small businesses.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228, "On any rule and regulation proposed to be promulgated, the proposing agency shall state in a simple declarative sentence, without additional comments on the merits or the policy of the rule or regulation, whether the rule or regulation may have a projected financial impact on local governments. The statement shall describe the financial impact in terms of increase in expenditures or decrease in revenues."

This rule is not anticipated to have an impact on local government.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

This rule describes MTSU's obligations in responding to allegations of sexual harassment consistent with Title IX's prohibition against sex discrimination by persons who apply for or are engaged in a MTSU education activity or program and provides specific details considering the grievance process required for formal complaints of sexual harassment. The proposed amendment only adds a single paragraph to the rule in subsection (4) to append the definition of "consent" to the rule, which was inadvertently omitted.

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

34 C.F.R. § 106. Pursuant to the Title IX Final Rule, "[t]o the extent of a conflict between State... law and title IX as implemented" with respect to sections related to definitions and specified procedures, "the obligation to comply with those sections is not obviated or alleviated by any State... law." 34 C.F.R. § 106.6(h).

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

The MTSU Board of Trustees urges adoption of this amendment. MTSU faculty, staff, and students are most directly affected by this rule. Neither faculty, staff, nor students urged either adoption or rejection of this amendment.

- (D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule or the necessity to promulgate the rule;

MTSU is not aware of an Attorney General opinion or judicial ruling that directly relates to this amendment.

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

None.

- (F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

James C. Floyd, MTSU University Counsel and Board Secretary

Christy Sigler, Assistant to the President for Institutional Equity and Compliance

- (G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

James C. Floyd, MTSU University Counsel and Board Secretary

Christy Sigler, Assistant to the President for Institutional Equity and Compliance

- (H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

James C. Floyd
University Counsel and Board Secretary
Middle Tennessee State University
1301 E. Main Street, CAB 209

Christy Sigler
Assistant to the President for Institutional Equity
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Middle Tennessee State University

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(I) Any additional information relevant to the rule proposed for continuation that the committee requests.

None.

Rules of
Middle Tennessee State University

Chapter 0240-07-06
Title IX Compliance

Amendment

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

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