



To: University Council

From: Ashley Leonard, Compliance Counsel

Date: November 19, 2019

Re: Policy on Discrimination & Harassment
Policy on Sexual Misconduct
ADA and Section 504 Grievance Procedure

I. Introduction

These three new policies consolidate and replace current policies: PPP-80 (Discrimination and Harassment - Complaint & Investigation), PPP-04 (Employment Opportunity, Affirmative Action, and Discrimination), PPP-40 (Affirmative Action Complaints), PPP-62 (Policy on Sexual Orientation), PPP-30 (Process for Title VI Filing Internal Complaints), and the student sexual misconduct policy in the undergraduate catalog. The public comment period for the three policies ran from October 21, 2019, through November 5, 2019. The university received one comment on the ADA and Section 504 Grievance Procedure and two comments on the Policy on Sexual Misconduct.

II. Comments Received

The two comments regarding the policy on sexual misconduct concerned the LGBTQ+ population. The commenters were concerned the policy did not prohibit sexual orientation discrimination. Both the policy on sexual misconduct and policy on discrimination and harassment protect sexual orientation, though. The one ADA and Section 504 grievance procedure comment complimented the draft policy for clarifying prohibited discrimination.

III. Legal Review of the Proposed Policy

These three policies comply with over fifteen (15) federal and state statutes and regulations and also comply with substantive and procedural due process requirements.



Policy on Discrimination and Harassment	
Responsible Official: University Counsel	Responsible Office: Office of University Compliance

Policy Purpose

The purpose of this policy is to provide East Tennessee State University (ETSU) with a mechanism for discovering discrimination or harassment as early as possible and for effectively correcting problems by providing for prompt and equitable resolution of discrimination and harassment reports.

Policy Statement

ETSU prohibits and seeks to eliminate all forms of discrimination and harassment based on a protected class in education programs and activities and employment. ETSU employees, students, and third parties can report discrimination or harassment without fear of adverse consequences and the university will be responsive to reports.

A. Scope and Applicability

1. This policy and procedure applies to the conduct of and protects:
 - a. ETSU students and applicants for admission
 - b. ETSU employees and applicants for employment
 - c. ETSU student organizations
 - d. ETSU contractors and third parties participating in a university education program or activity
2. Discrimination and harassment based on the following protected classes is prohibited:
 - a. Race, color, or ethnicity
 - b. National origin
 - c. Sex, sexual orientation, gender identity, or gender expression
 - d. Religion
 - e. Age

- f. Disability
 - g. Veteran's status
 - h. Genetic information
3. This policy and procedure applies to all discrimination or harassment reported to have occurred on or after the effective date of this policy.
 - a. If discrimination or harassment reportedly occurred prior to the effective date, the report will be evaluated using definitions contained in ETSU policies in effect at the time of the alleged discrimination. Procedures regarding the university's response to the report will be based on this policy and procedure.
 - b. If discrimination or harassment reportedly occurred in a time period spanning more than one year, the report will be evaluated using definitions contained in ETSU policies in effect at the time of the most recent alleged discrimination. Procedures regarding the university's response to the report will be based on this policy and procedure.
 4. This policy and procedure takes precedence over other university, college, or departmental policies and procedures concerning discrimination or harassment in the event of a conflict. The one exception to this is that ETSU's Policy against Sexual Misconduct applies to all sex-based discrimination reports.

B. Constitutional Rights Protected

1. All persons or organizations subject to this policy are entitled to all the rights and privileges guaranteed by the Constitution of the United States. The rights and requirements established under this policy and procedure are consistent with any guaranteed due process rights involved in an investigative proceeding.
2. In preventing or redressing prohibited discrimination or harassment, ETSU will formulate, interpret, and apply its rules so as to protect academic freedom and free speech rights.

C. Retaliation

1. Retaliation is prohibited against any individual who files a report, participates in a discrimination inquiry, investigation, hearing, or proceeding, or is regarded as filing a report or participating in a discrimination inquiry, investigation, hearing, or proceeding.
 - a. Individuals involved in investigations or disciplinary proceedings are encouraged to exercise discretion in sharing information to safeguard the integrity of the process and to avoid the appearance of retaliation.
 - b. While discretion regarding the process is important, reporting parties and responding parties are not restricted from discussing and sharing information with others who may support or assist them during the process.

2. Retaliation is also prohibited against any individual who advocates for others' protected class rights.
3. Retaliation is a violation of this policy regardless of whether the underlying allegation of a violation of this policy is ultimately found to have merit. Reports of retaliation will be treated separately from initial reports of alleged discriminatory conduct.

D. False Reports

1. A person who makes a report of discrimination or harassment or who provides false information to the university that is found to be intentionally false or made maliciously without regard for truth may be subject to disciplinary action.
2. This provision does not apply to reports made in good faith, even if an investigation does not find a policy violation.

E. ETSU Responsibilities

1. ETSU promotes equal opportunity in recruitment, selection, advancement, and terms and privileges associated with employment and education for all persons without regard to race, color, ethnicity, national origin, sex, sexual orientation, gender identity, gender expression, religion, age, disability, veteran's status, genetic information, or any other protected class.
2. ETSU affirmatively states it does not discriminate on the basis of race, color, ethnicity, national origin, sex, sexual orientation, gender identity, gender expression, religion, age, disability, veteran's status, genetic information, or any other protected class in its education programs and activities, and this policy extends to employment by the university.
 - a. The Compliance Officer oversees the creation and implementation of ETSU's annual affirmative action plan, which is designed to ensure equal employment opportunity.
 - b. The Compliance Officer is responsible for the development and execution of educational efforts regarding all types of discrimination and harassment, affirmative action, and equal opportunity.
3. Once ETSU has notice of possible discrimination or harassment, ETSU will take immediate and appropriate steps to investigate or otherwise determine what occurred and take prompt and effective steps reasonably calculated to end any discrimination, eliminate any hostile environment and its effects, and prevent discrimination from recurring.
4. These steps are ETSU's responsibility even if the misconduct is covered by a separate ETSU policy and regardless of whether the individual harassed makes a report, asks ETSU to act, or identifies the harassment as a form of discrimination.
5. FERPA

- a. A student's personally identifiable information found in the student's education records will be shared only with university employees who need to know to assist with the university's response to discrimination.
 - b. A student's personally identifiable information found in the student's education records will not be disclosed to third parties unaffiliated with the university unless:
 - i. The student gives consent;
 - ii. The university must respond to a lawfully issued subpoena or court order; or
 - iii. The university is otherwise required by law to disclose.
6. Tennessee Public Records Act
- a. Investigative reports prepared by university officials that do not contain personally identifiable student information are generally considered public records, which means the university is obligated by law to make them available to any Tennessee citizen upon request.
7. Preservation of materials
- a. The Office of University Compliance will maintain records obtained or created by the Office of University Compliance during resolution of alleged violations of this policy for seven years.
8. Conflicts of Interest
- a. All ETSU employees involved in the investigative and resolution process described in this policy and procedure are prohibited from real or perceived conflicts of interest.
 - b. A reporting party or responding party may raise bias or a conflict of interest regarding ETSU employees involved in the investigative and resolution process at any time prior to an investigative report being issued.
 - i. Reports of bias or conflict of interest of investigators should be made to the Compliance Officer, who will make a final determination as to whether bias or a conflict of interest exists.
 - ii. Reports of bias or conflict of interest of the Compliance Officer should be made to ETSU's Compliance Counsel, who will make a final determination as to whether bias or a conflict of interest exists.

Authority: Executive Order 11246, as amended; The Rehabilitation Act of 1973, as amended; The Americans with Disabilities Act, as amended; The Age Discrimination in Employment Act of 1967; The Age Discrimination Act of 1975; The Older Workers Benefit Protection Act; The Pregnancy Discrimination Act; Title VI and Title VII of the Civil Rights Act of 1964, as amended; The Equal Pay Act of 1963, as amended; The Immigration Reform and Control Act; The Uniformed Services Employment and Reemployment Rights Act; The Genetic Information Nondiscrimination Act of

2008; The Tennessee Human Rights Act; the Family Educational Rights and Privacy Act; the Tennessee Public Records Act; and all other applicable state and federal laws and regulations.

Definitions

Compliance Officer	The university's compliance officer is also the university's Title IX Coordinator and Title VI Coordinator.
Discrimination	Treating a person less favorably because of their protected class or having a policy or practice that has a disproportionate adverse impact on protected class members.
Education program or activity	All of the university's operations and services, including academic, educational, extra-curricular, athletic, and other programs of the school, regardless of location.
Harassment	Conduct based on a protected class that adversely affects a term or condition of a person's employment or education program or activity; has the purpose or effect of unreasonably interfering with a person's employment or education program or activity or creating a hostile environment; or is used as a basis for or a factor in decisions that tangibly affect a person's employment or participation in an education program or activity.
Hostile environment	Unwelcome conduct that is so severe, pervasive, and objectively offensive that it denies or limits an individual's ability to participate in or benefit from their employment or a university education program or activity. Conduct is considered from a subjective and an objective perspective based on the totality of the circumstances. Creating a hostile environment is a form of harassment.
Informal resolution	A resolution that is reached regarding a claim of discrimination or harassment without a formal investigation finding. Informal resolution may include mediation, facilitated dialogue, conflict coaching, restorative justice, or other models of alternative dispute resolution.
Preponderance of the evidence	Whether it is more likely than not that the responding party violated this policy and procedure by engaging in discrimination, harassment, or retaliation. In a university disciplinary proceeding, the university has the burden of proving violations of university policy by a preponderance of the evidence.
Protected activity	A person's good faith opposition to or report of discrimination or harassment, or assisting a person who opposes or reports discrimination or harassment to the university, the police, or a state or federal agency. Protected activity also includes participation in a discrimination inquiry, including an investigation, proceeding, or hearing.

Report	Information provided to the Compliance Officer regarding an incident of discrimination or harassment, whether provided by a reporting party, a responding party, a witness, or third party.
Reporting party	A person(s) or student organization who may have been subject to discrimination or harassment regardless of whether that person(s) or student organization makes a report or seeks action under this policy.
Request for limited action	A reporting party's request to the university to limit the university's involvement in a report.
Responding party	A person(s) or organization who is accused of committing discrimination or harassment.
Retaliation	An adverse action taken because of a person's participation in a protected activity that would discourage a reasonable person from engaging in the protected activity.

Policy History

Effective Date:

Revision Date:

Procedure(s)

I. Reporting Options

A. Compliance Officer

1. The university's Compliance Officer oversees compliance with all aspects of the university's policy against discrimination and harassment. The Compliance Officer reports to ETSU's Compliance Counsel and is housed in the Office of University Compliance.
2. Reports or complaints of discrimination or harassment may be filed with ETSU's Compliance Officer, Garrison Burton.
 - a. The Compliance Officer's office is located in 201 Nell Dossett Hall on ETSU's Main Campus in Johnson City, Tennessee.
 - b. The phone number is 423-439-8545 and the email is compliance@etsu.edu.
3. Individuals may also report discrimination or harassment to ETSU's Assistant Compliance Officers:

- a. Jean Rushing – Assistant Equity Compliance Officer/Deputy Title IX Coordinator/Deputy Title VI Coordinator
 - b. Michelle Edwards – Assistant Equity Compliance Officer/Deputy Title IX Coordinator/Deputy Title VI Coordinator
4. Anonymous reports can be made using the online reporting form posted at: <https://www.etsu.edu/universitycounsel/compliance/documents/discrimination-harassment-retaliation.pdf>.
5. Inquiries or complaints regarding discrimination or harassment may also be made to:
- a. The United States Department of Education, Office for Civil Rights, 61 Forsyth Street, S.W., Suite 19T10, Atlanta, GA 30303.
 - b. The United States Department of Justice, Civil Rights Division, 950 Pennsylvania Avenue, N.W., Educational Opportunities Section, PHB, Washington, D.C. 20530.
 - c. The Equal Employment Opportunity Commission, 220 Athens Way, Suite 350, Nashville, TN 37228.
 - d. The United States Department of Labor – OFCCP, 1321 Murfreesboro Rd., Ste. 301, Nashville, TN 37217.
 - e. The Tennessee Human Rights Commission, 312 Rosa L. Parks Ave., 23rd Floor, Nashville, TN 37243.
 - f. External agencies have deadlines to file complaints. It is an individual's responsibility to know those deadlines.
- B. Confidentiality
1. Individuals who desire to communicate with someone who by law can keep information confidential should contact:
 - a. [ETSU's Counseling Center](#)
 - b. A personal attorney
 - c. A clergy member
 - d. A physician or licensed mental health professional
 2. Information communicated to the Compliance Officer or Assistant Compliance Officers will not be confidential, but will be kept private, which means information will initially be shared only with university employees who need to be involved in responding to a report.

- a. Individuals are free to limit the details they share while they decide whether to report an incident of discrimination or harassment to the university.
- b. ETSU will take all reasonable steps to investigate and respond to a report consistent with a request for confidentiality as long as doing so does not prevent the university from responding effectively to discrimination and harassment and preventing discrimination of other individuals.

3. Anonymous Reporting

- a. If ETSU learns of discrimination or harassment through an anonymous report, different factors will affect ETSU's response. These factors are:
 - i. the source and nature of the information;
 - ii. the seriousness of the alleged incident;
 - iii. the specificity of the information;
 - iv. the objectivity and credibility of the source of the report;
 - v. whether any individuals can be identified who were subjected to the alleged discrimination; and
 - vi. whether those individuals want to pursue the matter.
- b. If it is reasonable for ETSU to investigate and the university can confirm the allegations, ETSU will take appropriate responsive action.

II. Grievance Procedure

A. Scope

1. Use of this grievance procedure applies to reports alleging discrimination or harassment carried out by employees, students, student organizations, or third parties.
2. All reports of discrimination and harassment are taken seriously. At the same time, those accused of discrimination or harassment are presumed innocent throughout this grievance procedure.

B. Initial University Response and Assessment

1. After receiving a report of discrimination or harassment, the Compliance Officer takes immediate and appropriate steps to:
 - a. Communicate with the individual who reported the alleged discriminatory conduct;
 - b. Provide the individual with a copy of this policy and procedure; and
 - c. Determine whether the alleged conduct, as described by the reporting party, falls within the scope of this policy and if so, initiate the investigation and resolution procedures outlined below.

2. The Compliance Officer has discretion to administratively close a report of discrimination or harassment if after an initial assessment:
 - a. The allegations as stated do not constitute a violation of this policy and procedure; or
 - b. A request for limited action is granted.
 - c. The Compliance Officer notifies the reporting party if the allegations as stated do not constitute a violation of this policy and procedure and directs the individual to the appropriate university office or department to resolve the report.
3. Request for Limited Action
 - a. When an incident of discrimination or harassment is reported to the Compliance Officer, the reporting party has a right to:
 - i. Request the report or the reporting party's contact with the Compliance Officer not be disclosed to the responding party;
 - ii. Decline to personally identify the responding party;
 - iii. Decline to respond to communications from the Compliance Officer; and
 - iv. Request the university not investigate or stop an ongoing investigation that is not substantially complete.
 - b. The Compliance Officer evaluates a request for limited action in the context of the university's responsibility to provide a safe and nondiscriminatory environment for all individuals. The Compliance Officer considers these factors in the evaluation:
 - i. The seriousness of the alleged discriminatory conduct;
 - ii. The age of the individuals involved;
 - iii. Whether there have been other reports of discrimination or harassment against the accused individual(s);
 - iv. The risk the accused individual(s) will commit additional discrimination, harassment, or retaliation; and
 - v. The rights of the accused individual(s) to receive information about the accuser(s) and the allegations if a formal proceeding with sanctions may result.
 - c. If the Compliance Officer honors the request for limited action, the university mitigates the effects of alleged discrimination or harassment and prevents its recurrence, but remedial or disciplinary actions against individuals may be limited.
 - d. If the Compliance Officer does not grant a request for limited action, the Compliance Officer informs the reporting party of the decision prior to starting or continuing an investigation.
 - i. If the university must disclose the reporting party's identity to the responding party, the Compliance Officer notifies the reporting party of that determination prior to the disclosure.

- ii. The university will honor a request by the reporting party that the university inform the responding party the reporting party asked the university not to investigate or seek discipline.
4. Because the university is under a continuing obligation to address the issues of discrimination and harassment campus-wide, reports of discrimination may prompt the university to consider broader remedial action, such as increased monitoring, increased education and prevention efforts, additional climate surveys, and revisiting policies and practices.

C. Informal Resolution

1. Any party may request the university facilitate an informal resolution to a discrimination or harassment report at any time after the university's initial assessment of a report. The Compliance Officer, at their discretion, may suggest an informal resolution to the parties at any time after the university's initial assessment of a report, too.
 - a. Upon a request for informal resolution, the Compliance Officer determines whether informal resolution is appropriate based on the facts and circumstances of the case. The Compliance Officer ensures that any proposed informal resolution is consistent with the university's obligations to prevent and redress discrimination and harassment.
 - b. Sexual assault reports are not eligible for informal resolution.
2. Informal resolution is voluntary.
 - a. The reporting party and the responding party must provide written consent for informal resolution to take place.
 - b. Any party has a right to end the informal process at any time and begin the formal process.
3. Informal resolution concludes the matter only when all parties have signed a written agreement that confirms resolution of discrimination allegations.
 - a. The resolution agreement must include a waiver of the responding party's right, if any, to have a formal hearing on the allegations.
 - b. Neither the reporting party nor the responding party may revoke or appeal a resolution agreement.
4. If a resolution agreement is not reached, the university will proceed with a formal investigation.

D. Formal Investigation

1. The goal of a formal investigation is to reach a determination as to whether a responding party has violated one or more university policies prohibiting discrimination and unlawful harassment and if so, remedy the effects of a violation.
 - a. The Compliance Officer determines the nature and scope of investigations on a case-by-case basis. The Compliance Officer may include possible violations of other university policies that contributed to, arose from, or are otherwise related to alleged violations of this policy and procedure in the scope of an investigation.
 - b. The Compliance Officer designates two investigators to investigate and give written notice to the reporting party and responding party of the investigation, providing sufficient details to allow the parties to prepare for initial interviews.
 - c. A responding party may respond in writing to the notice of investigation within five business days following the date of receipt of the notice of investigation.
2. Parties to an investigation can expect a prompt, thorough, and equitable investigation of reports, including the opportunity for parties to ask questions, present witnesses, and provide information regarding the allegations.
 - a. Students are not required to participate in an investigation.
 - i. If a student chooses not to participate in an investigation, the university's ability to respond fully or discipline individuals may be limited.
 - ii. Failure to respond or participate in an investigation will not prevent the completion of the investigation. The investigators will make determinations based on the totality of the evidence available.
 - b. Employees are required to participate in an investigation. Failure or refusal to cooperate with, or interference with, investigative proceedings may result in disciplinary action, up to and including termination.
3. The standard of proof used in investigations is preponderance of the evidence. It is the university's responsibility to establish the standard of proof and gather evidence during investigations.
4. The university aims to bring all investigations to a resolution within sixty (60) business days from the date the Compliance Officer determines an investigation will commence.
 - a. Extensions of timeframe for good cause are allowed, so long as written notice and the reason for the delay is provided to the parties. Good cause includes:
 - i. The complexity and/or number of the allegations;
 - ii. The severity and extent of the alleged misconduct;
 - iii. The number of parties, witnesses, and other types of evidence involved;
 - iv. The availability of the parties, witnesses, and evidence;
 - v. A request by a party to delay an investigation;
 - vi. The effect of a concurrent criminal investigation or proceeding;

- vii. Intervening holidays, university breaks, or other closures;
 - viii. Good faith efforts to reach a resolution; or
 - ix. Other unforeseen circumstances.
- b. Investigations typically include interviews with the reporting party, the responding party, and any witnesses, and the objective evaluation of any physical, documentary, or other evidence as appropriate and available. The university gives the reporting party and the responding party written notice of any interview, meeting, or hearing at which a party is invited or expected to participate.
- c. The Compliance Officer informs the reporting party and responding party at regular intervals of the status of the investigation.
- d. The university may suspend a student, employee, or student organization pending the completion of an investigation and resolution, particularly when in the judgment of the Compliance Officer, the safety or well-being of any member(s) of the campus community may be jeopardized by the on-campus presence of the accused individual or organization.
- i. In all cases in which an interim suspension is imposed, the student, employee, or student organization are given the opportunity to meet with the Compliance Officer or their designee prior to such suspension to show cause why the suspension should not be implemented.
 - ii. The Compliance Officer, after consulting with appropriate university officials, has sole discretion to implement or stay an interim suspension and to determine its conditions and duration.
 - iii. Violation of an interim suspension under this policy is grounds for expulsion or termination.
5. Interviews conducted as part of an investigation under this policy and procedure may be recorded by the university. Recordings not authorized by the university are prohibited.
6. The reporting party and the responding party have the right to be accompanied by an advisor of their choosing during all stages of an investigation.
- a. A party may elect to change advisors during the process.
 - b. All advisors are subject to the same rules:
 - i. The advisor's role is limited to providing advice, guidance, and support to the reporting party or responding party. An advisor is not permitted to act as a participant or advocate during the investigative process.
 - ii. Advisors may not address campus officials in a meeting, interview, or hearing unless invited to.
 - iii. Advisors are expected to maintain the privacy of the records shared with them.
 - iv. Advisors are expected to refrain from interfering with investigations.
 - v. Any advisor who steps out of their role during an investigation process are warned once. If the advisor continues to disrupt or otherwise fails to respect the limits of

the advisor role, the advisor will be asked to leave. The Compliance Officer determines whether the advisor may return or should be replaced by a different advisor.

7. Prior to making a final determination, investigators prepare a preliminary report containing the statements of the parties and witnesses and relevant evidence.
 - a. The reporting party and the responding party receive a copy of the preliminary report simultaneously. The reporting party and the responding party are given equal access to evidence to the extent possible based on the circumstances of the investigation.
 - b. The reporting party and the responding party may submit written comments on the preliminary report within ten business days after receipt of the preliminary report.
 - i. Any comments must be submitted to the investigators via email, mail, or hand delivery by 5:00pm eastern standard time on the date comments are due.
 - ii. Comments may not exceed 10 double-spaced pages on 8.5x11 paper with one-inch margins and 12-point font.
 - c. The investigators consider any comments received from the parties and conduct any further investigation necessary or appropriate.
8. Following an investigation, investigators prepare a final report that includes findings and recommendations as to whether a responding party should be found in violation of university policy.
 - a. The final report includes:
 - i. A summary of the allegations;
 - ii. A summary of the response;
 - iii. A summary of the investigative steps taken to verify the allegations and response;
 - iv. A determination of whether the evidence supports a finding that a violation of university policy occurred;
 - v. The facts and evidence on which such determination is based; and
 - vi. Any recommendations regarding disposition.
 - b. The reporting party and the responding party receive simultaneous notice of the investigators' final report.
 - c. Appropriate ETSU administrator(s) receive the final report and the parties' comments to the preliminary report, and are responsible for imposing disciplinary sanctions, if appropriate.
9. The university's actions to correct and prevent the recurrence of any policy violations may include taking disciplinary action, up to and including termination or expulsion from the university. ETSU policies and procedures applicable to disciplinary processes include due process protections and may be found here:

- a. Student disciplinary policies:
 - i. ETSU Undergraduate Catalog
 - ii. ETSU Graduate Catalog
 - iii. Conduct Process Flowchart
 - iv. Pre-Hearing Information
 - v. Post-Hearing and Appeals Information
- b. Faculty:
 - i. Faculty Progressive Discipline Guidelines
 - ii. [Tenure](#)
- c. Staff:
 - i. [PPP-70 Progressive Disciplinary Procedures](#)
- d. Reporting parties and responding parties are afforded similar and timely access to any documents and information used in a university disciplinary action, including any investigative report.

Procedure History

Effective Date:

Revision Date:

Related Form(s)

Scope and Applicability

Primary: Students, Employment

Secondary: Academic, Health and Safety, Operations and Facilities



Policy on Sexual Misconduct	
Responsible Official: University Counsel	Responsible Office: Office of University Compliance

Policy Purpose

The purpose of this policy is to 1) provide ETSU with a mechanism for discovering sexual misconduct as early as possible and for effectively correcting problems by providing for prompt and equitable resolution of sexual misconduct reports, 2) identify support and reporting options for individuals, and 3) explain the obligations of ETSU employees to report sexual misconduct to the university.

Policy Statement

ETSU prohibits and seeks to eliminate all forms of sexual misconduct in education programs and employment. ETSU employees, students, and third parties can report sexual misconduct without fear of adverse consequences and the university will be responsive to reports.

A. Scope and Applicability

1. This policy and procedure applies to the conduct of and protects:
 - a. ETSU students and applicants for admission
 - b. ETSU employees and applicants for employment
 - c. ETSU student organizations
 - d. University School students and employees
 - e. ETSU contractors and third parties participating in a university education program or activity
2. This policy and procedure applies to conduct that:
 - a. Occurs on university-owned property
 - b. Occurs in the context of a university education program, activity, or employment regardless of location

- c. Occurs outside the context of a university education program, activity, or employment but creates a hostile environment on university controlled property or within a university education program, activity, or employment
3. The following discriminatory conduct is prohibited:
 - a. Sex-based discrimination
 - b. Gender-based harassment
 - c. Hate crimes
 - d. Intimidation
 - e. Pregnancy, parenting, or marital status
 - f. Relationship violence
 - g. Sexual assault
 - h. Sexual harassment
 - i. Stalking
 - j. Attempts to commit any of the above listed conduct
4. This policy or procedure applies to all sexual misconduct reported to have occurred on or after the effective date listed in the policy or procedure.
 - a. If sexual misconduct reportedly occurred prior to the effective date, the report will be evaluated using definitions contained in ETSU policies in effect at the time of the alleged discrimination. Procedures regarding the university's response to the report will be based on this policy and procedure.
 - b. If sexual misconduct reportedly occurred in a time period spanning more than one year, the report will be evaluated using definitions contained in ETSU policies in effect at the time of the most recent alleged discrimination. Procedures regarding the university's response to the report will be based on this policy and procedure.
5. This policy and procedure takes precedence over other university, college, or departmental policies and procedures concerning sexual misconduct in the event of a conflict.

B. Constitutional Rights Protected

1. All persons or organizations subject to this policy are entitled to all the rights and privileges guaranteed by the Constitution of the United States. The rights and requirements established under this policy and procedure are consistent with any guaranteed due process rights involved in an investigative proceeding.

2. In preventing or redressing prohibited discrimination or harassment, ETSU will formulate, interpret, and apply its rules so as to protect academic freedom and free speech rights.

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 - a. Individuals involved in investigations or disciplinary proceedings are encouraged to exercise discretion in sharing information to safeguard the integrity of the process and to avoid the appearance of retaliation.
 - b. While discretion regarding the process is important, reporting parties and responding parties are not restricted from discussing and sharing information with others who may support or assist them during the process.
2. Retaliation is also prohibited against any individual who advocates for others' sexual misconduct rights.
3. Retaliation is a violation of this policy regardless of whether the underlying allegation of a violation of this policy is ultimately found to have merit. Reports of retaliation will be treated separately from initial reports of alleged discriminatory conduct.

D. False Reports

1. A person who makes a report of sexual misconduct or who provides false information to the university that is found to be intentionally false or made maliciously without regard for truth may be subject to disciplinary action.
2. This provision does not apply to reports made in good faith, even if an investigation does not find a policy violation.

E. ETSU Responsibilities

1. Once ETSU has notice of possible sexual misconduct, ETSU will take immediate and appropriate steps to investigate or otherwise determine what occurred and take prompt and effective steps reasonably calculated to end any discrimination, eliminate any hostile environment and its effects, and prevent discrimination from recurring.
2. These steps are ETSU's responsibility even if the misconduct is covered by a separate ETSU policy and regardless of whether the individual harassed makes a report, asks ETSU to take action, or identifies the harassment as a form of discrimination.
3. Clery Act

- a. Certain university employees called “campus security authorities” (CSAs) have a duty to report certain crime categories, including some sexual misconduct, to ETSU’s Clery Compliance Coordinator.
 - i. CSAs are notified of their status by the Clery Compliance Coordinator.
 - ii. CSAs are not required to report personally identifiable information, but statistical information must be sent to the Clery Compliance Coordinator regarding the type of incident that occurred and its general location.
 - iii. Reports by CSAs are not official police reports and do not initiate criminal investigations.
 - b. The university is required to issue timely warnings for crimes reported to CSAs or ETSU’s Department of Public Safety that pose a substantial threat of bodily harm or danger to members of the campus community.
 - i. ETSU will make reasonable efforts to avoid disclosing a reporting party’s name and other identifying information while still providing enough information for community members to make safety decisions in light of the potential danger.
4. Responsible employees
- a. The university has notice of alleged sexual misconduct if the alleged misconduct is reported to or witnessed by certain university employees called “responsible employees.”
 - b. Responsible employees must report allegations of sexual misconduct to the Title IX Coordinator.
 - i. Responsible employees must report names, if known, and relevant details about the alleged conduct, including the date, time, and location of events so the university can take steps to address the matter promptly and resolve it fairly.
 - ii. Responsible employees cannot promise confidentiality of reports to individuals.
 - iii. Failure of responsible employees to report sexual misconduct to the Title IX Coordinator may result in disciplinary action, up to and including termination of employment.
 - c. Responsible employees have no duty to report if the employee:
 - i. Is personally subjected to sexual misconduct.
 - ii. Is someone who by law can keep the information confidential and the employee received the information while acting in a professional, confidential capacity.
 - iii. Receives the information during a public awareness event.
 - iv. Receives information through an in-class discussion, a class paper, or other academic assignment.
 - v. Is a student employee and did not receive notice of the incident in the student employee’s university employment capacity.

5. FERPA

- a. A student's personally identifiable information found in the student's education records will be shared only with university employees who need to know to assist with the university's response to sexual misconduct.
- b. A student's personally identifiable information found in the student's education records will not be disclosed to third parties unaffiliated with the university unless:
 - i. The student gives consent;
 - ii. The university must respond to a lawfully issued subpoena or court order; or
 - iii. The university is otherwise required by law to disclose.

6. Tennessee Public Records Act

- a. Incident reports prepared by ETSU's Department of Public Safety for law enforcement purposes are generally considered public records and are not protected by FERPA, which means the university is obligated by law to make them available to any Tennessee citizen upon request unless the incident report is part of an ongoing criminal investigation.
- b. Investigative reports prepared by university officials that do not contain personally identifiable student information are also generally considered public records.
- c. Information that is reasonably likely to identify a victim or a student accused of committing a sexual offense or violent sexual offense, as defined by Tenn. Code Ann. § 40-39-202, will be treated as confidential and not be open for inspection under the Tennessee Public Records Act.

7. Preservation of materials

- a. The Office of University Compliance will maintain records obtained or created by the Office of University Compliance during resolution of alleged violations of this policy for seven years.

8. Conflicts of Interest

- a. All ETSU employees involved in the investigative and resolution process described in this policy and procedure are prohibited from real or perceived conflicts of interest.
- b. A reporting party or responding party may raise bias or a conflict of interest regarding ETSU employees involved in the investigative and resolution process at any time prior to an investigative report being issued.
 - i. Reports of bias or conflict of interest of investigators should be made to the Title IX Coordinator, who will make a final determination as to whether bias or a conflict of interest exists.

- ii. Reports of bias or conflict of interest of the Title IX Coordinator should be made to ETSU's Compliance Counsel, who will make a final determination as to whether bias or a conflict of interest exists.

Authority: Tenn. Code Ann. § 40-39-202; Title IX of the Education Amendments of 1972 and its implementing regulations

Definitions

Campus Security Authorities (CSA)	Persons who by virtue of their university responsibilities are designated to receive and report criminal incidents to ETSU's Department of Public Safety. Campus security authorities include ETSU Department of Public Safety employees, individuals who have responsibilities for campus security, and ETSU employees who have significant responsibilities for student and campus activities.
Consent	Words and/or conduct that communicate a person's willingness to participate in an act. A person cannot consent if the person is incapacitated, forced to act or participate in an act, or is under the age of 18, unless the person giving consent is at least 13 years old and the other person is less than four years older.
Education program or activity	All of the university's operations and services, including academic, educational, extra-curricular, athletic, and other programs of the school, regardless of location.
Gender-based harassment	Unwelcome conduct based on an individual's actual or perceived sex, including harassment based on gender identity or nonconformity with sex stereotypes, and not necessarily involving conduct of a sexual nature that denies or limits an individual's ability to participate in or benefit from an educational program or activity. Gender-based harassment is a form of sexual misconduct.
Hate crime	A criminal offense that evidences the reporting party was intentionally selected because of the responding party's bias against the reporting party. A hate crime may include intimidation or sexual assault and may be a form of sexual harassment.
Hostile environment	Unwelcome conduct that is so severe, pervasive, and objectively offensive that it denies or limits an individual's ability to participate in or benefit from a university educational program or activity. Conduct is considered from a subjective and an objective perspective based on the totality of the circumstances. Hostile environment is a form of sexual harassment.
Incapacitate (-ed, -tion)	A voluntary or involuntary temporary or permanent physical or mental state in which a person cannot make an informed judgment.

Informal resolution	A resolution that is reached regarding a claim of sexual misconduct without a formal investigation finding. Informal resolution may include mediation, facilitated dialogue, conflict coaching, restorative justice, or other models of alternative dispute resolution.
Interim measures	Non-disciplinary and non-punitive individualized services offered as appropriate and without fee or charge to protect the safety of individuals, deter sexual misconduct, and provide due process. Interim measures are available to reporting parties and responding parties regardless of whether an informal resolution or formal investigation takes place. Interim measures include counseling, extensions of time or other course-related adjustments, modifications of work or class schedules, campus escort services, restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of campus, and other similar accommodations.
Intimidation	To unlawfully place another person in reasonable fear of bodily harm through the use of threatening words and/or conduct, but without displaying a weapon or subjecting the person to actual attack. Intimidation includes cyber-intimidation if the person is threatened within ETSU's Clery geography, as defined by the Clery Act.
Preponderance of the evidence	Whether it is more likely than not that the responding party violated this policy and procedure by engaging in sexual misconduct. In a university disciplinary proceeding, the university has the burden of proving violations of university policy by a preponderance of the evidence.
Protected activity	A person's good faith opposition to or report of sexual misconduct or assisting a person who opposes or reports sexual misconduct to the university, the police, or a state or federal agency. Protected activity also includes participation in a sexual misconduct inquiry, including an investigation, proceeding, or hearing.
Quid pro quo harassment	A person having power or authority over another and conditioning an educational or employment benefit or service or access to receiving the educational or employment benefit or service upon a person's participation in unwelcome sexual conduct. Quid pro quo harassment is a form of sexual harassment.
Reasonable person	A sober, objective person in the same situation, with ordinary sensitivities, and with similar identities as the person whose words and/or conduct are being evaluated.
Relationship violence	An act of violence, or a threat of an act of violence, committed by a person who is or has been in a sexual, dating, spousal, romantic, familial, or other intimate relationship with the reporting party. Relationship violence may include conduct that meets the definition of domestic

violence or dating violence as used in the Clery Act and may be a form of sexual harassment.

Report	Information provided to the Title IX Coordinator, Title IX Deputy Coordinators, or an ETSU responsible employee regarding an incident of sexual misconduct, whether provided by a reporting party, a responding party, a witness, or third party.
Reporting party	A person(s) who may have been subject to sexual misconduct regardless of whether that person(s) makes a report or seeks action under this policy.
Request for Limited Action	A reporting party's request to the university to limit the university's involvement in a report.
Responding party	A person(s) or organization who is accused of committing sexual misconduct.
Responsible employee	Any employee who has authority to act to redress harassment, who has the duty to report sexual misconduct by students or employees to appropriate school officials, or who a student could reasonably believe has this authority or responsibility.
Retaliation	An adverse action taken because of a person's participation in a protected activity that would discourage a reasonable person from engaging in the protected activity.
Sex-based discrimination	Treating individuals less favorably because of their sex, sexual orientation, pregnancy, parenting, or marital status, or having a policy or practice that has a disproportionately adverse impact on protected class members.
Sexual assault	Any sexual act directed against a person without that person's consent or when a person is incapable of giving consent, including conduct that meets the definition of rape, statutory rape, fondling, and incest as defined by the Clery Act and sexual battery, sexual exploitation, and criminal sexual conduct as defined by Tennessee state law. Sexual assault is a form of sexual misconduct.
Sexual harassment	An umbrella term that encompasses hostile environment, quid pro quo harassment, hate crime, relationship violence, and intimidation. Sexual harassment is a form of prohibited sex discrimination. Sexual harassment may include unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, digital or physical conduct of a sexual nature.
Sexual misconduct	An umbrella term that encompasses sex-based discrimination, gender-based harassment, sexual harassment, stalking, and sexual assault.

Sexual misconduct also includes intimidation or a hate crime when such conduct is sex or gender-based.

Stalking	Two or more willful acts directed at a specific person that would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed, or molested and that actually causes the person to feel terrorized, frightened, intimidated, threatened, harassed, or molested. Stalking may be a form of prohibited sexual misconduct and includes cyber-stalking.
Timely warnings	Messages sent using ETSU's GoldAlert notification system to immediately notify the campus community of a crime that has already occurred but is an ongoing threat to the health or safety of the campus community.
Unwelcome conduct	Conduct that is not requested or invited and is undesirable or offensive. Acquiescence in the conduct or failure to complain does not necessarily mean conduct was welcome.

Policy History

Effective Date:
Revision Date:

Procedure(s)

- I. Support and Reporting Options
 - A. Title IX Coordinator
 1. The university's Title IX Coordinator oversees compliance with all aspects of the university's policy against sexual misconduct. The Coordinator reports to ETSU's Compliance Counsel and is housed in the Office of University Compliance.
 2. Reports or complaints of sexual misconduct may be filed with ETSU's Title IX Coordinator, Garrison Burton.
 - a. The Title IX Coordinator's office is located in 202 Nell Dossett Hall on ETSU's Main Campus in Johnson City, Tennessee.
 - b. The phone number is 423-439-8545 and the email is compliance@etsu.edu.
 - c. The Title IX Coordinator is also accessible for consultation and assistance about support and reporting options.
 3. Individuals may also report harassment to ETSU's Deputy Title IX Coordinators:

- a. Jean Rushing – Deputy Title IX Coordinator & Assistant Equity Compliance Officer
 - b. Michelle Edwards – Deputy Title IX Coordinator & Assistant Equity Compliance Officer
 - c. Diana McClay – Deputy Title IX Coordinator for Human Resources
 - d. Kay Lennon – Deputy Title IX Coordinator for Intercollegiate Athletics
4. Anonymous reports can be made using the online reporting form posted at:
https://www.etsu.edu/universitycounsel/compliance/documents/dhr_8_6_2019.pdf.
 5. Inquiries or complaints regarding sexual misconduct may also be made to:
 - a. The United States Department of Education, Office for Civil Rights, 61 Forsyth Street, S.W., Suite 19T10, Atlanta, GA 30303.
 - b. U.S. Department of Justice Civil Rights Division, 950 Pennsylvania Avenue, N.W., Educational Opportunities Section, PHB, Washington, D.C. 20530.
 - c. The Equal Employment Opportunity Commission, 220 Athens Way, Suite 350, Nashville, TN 37228.
 - d. The Tennessee Human Rights Commission, 312 Rosa L. Parks Ave., 23rd Floor, Nashville, TN 37243.
 - e. External agencies have deadlines to file complaints. It is an individual's responsibility to know those deadlines.
- B. Confidentiality
1. Individuals who desire to communicate with someone who by law can keep information confidential should contact:
 - a. [ETSU's Counseling Center](#)
 - b. A personal attorney
 - c. A clergy member
 - d. A physician or licensed mental health professional who is not an employee or contractor of the university
 2. Information communicated to the Title IX Coordinator, Deputy Title IX Coordinators, or ETSU responsible employees will not be confidential, but will be kept private, which means information will initially be shared only with university employees who need to be involved in responding to a report.

- a. Individuals are free to limit the details they share while they decide whether to report an incident of sexual misconduct to the university.
- b. ETSU will take all reasonable steps to investigate and respond to a report consistent with a request for confidentiality as long as doing so does not prevent the university from responding effectively to sexual misconduct and preventing discrimination of other individuals.

3. Anonymous Reporting

- a. If ETSU learns of sexual misconduct through an anonymous report, different factors will affect ETSU's response. These factors are:
 - i. the source and nature of the information;
 - ii. the seriousness of the alleged incident;
 - iii. the specificity of the information;
 - iv. the objectivity and credibility of the source of the report;
 - v. whether any individuals can be identified who were subjected to the alleged discrimination; and
 - vi. whether those individuals want to pursue the matter.
- b. If it is reasonable for ETSU to investigate and the university can confirm the allegations, ETSU will take appropriate responsive action.

C. Reporting Options

1. Individuals have multiple options for reporting sexual misconduct. Individuals may report sexual misconduct to the university, to the police, to both, or to neither.
2. Report to the University
 - a. ETSU takes reports of sexual misconduct seriously. How the university responds depends upon a variety of factors, such as:
 - i. The wishes of the reporting party;
 - ii. The facts and circumstances of the specific incident;
 - iii. To whom it was reported; and
 - iv. The university's obligations under applicable federal and state laws.
 - b. The university encourages individuals to report sexual misconduct as soon as possible after an incident, but alleged discrimination may be reported at any time.
 - c. A person who wants to report sexual misconduct to the university should contact the Title IX Coordinator or a Deputy Title IX Coordinator.
3. Report to the Police

- a. The university encourages individuals to report incidents of sexual assault, relationship violence, and stalking to [ETSU's Department of Public Safety](#) or the Johnson City Police Department.
 - b. ETSU's Department of Public Safety and the Johnson City Police Department are available for emergency response, facilitating medical transport, investigating incidents of a criminal nature, referrals, and assistance with preserving evidence.
 - c. The filing of a police report or the pendency of legal proceedings does not preclude the university from proceeding with an investigation or determination under this policy and procedure. The university will comply, though, with law enforcement agency requests for cooperation, which may require the university to temporarily suspend the fact-finding aspect of an investigation.
4. Benefits of Reporting
- a. Reporting sexual misconduct to the university empowers individuals to obtain the support they need and enables the university to respond appropriately.
 - b. Reporting parties are not required to report sexual misconduct if they do not want the university to respond to the incident or assist with interim measures, but if an incident is not reported, the university will not be able to take steps to identify support resources for the reporting party or promptly, thoroughly, and equitably investigate the incident to eliminate the discrimination, prevent its recurrence, and address its effects.
5. Amnesty
- a. ETSU recognizes a student under the influence of alcohol and/or drugs at the time of a reportable incident may be hesitant to report the incident to the university. Because of the importance to the university of responding to sexual misconduct, a student who reports discriminatory conduct or provides information in a university investigation will not be subject to disciplinary action for personal consumption of alcohol or other drugs, or minor offenses, at or near the time of the reported incident.
 - b. A student may be responsible for other, more serious conduct that harmed or placed the health or safety of another person at risk.
- II. Grievance Procedure
- A. Scope
1. Use of this grievance procedure applies to reports alleging sexual misconduct carried out by employees, other students, or third parties.
 2. All reports of sexual misconduct are taken seriously. At the same time, those accused of sexual misconduct are presumed innocent throughout this grievance procedure.
- B. Initial University Response and Assessment

1. After receiving a report of sexual misconduct, the Title IX Coordinator takes immediate and appropriate steps to:
 - a. Communicate with the individual who reported the alleged discriminatory conduct;
 - b. Implement interim measures to eliminate and prevent the recurrence of sex discrimination, deter retaliation, remedy the effects of sex discrimination, and provide due process rights during a university investigation;
 - c. Provide the individual with a copy of this policy and procedure; and
 - d. Determine whether the alleged conduct, as described by the reporting party, falls within the scope of this policy and if so, initiate the investigation and resolution procedures outlined below.
 - e. The Title IX Coordinator may delegate the authority to take some or all of these steps to a Deputy Title IX Coordinator.
2. The Title IX Coordinator has discretion to administratively close a report of sexual misconduct if after an initial assessment:
 - a. The allegations as stated do not constitute a violation of this policy and procedure; or
 - b. A request for limited action is granted.
 - c. The Title IX Coordinator will notify the reporter if the allegations as stated do not constitute a violation of this policy and procedure and direct the reporter to the appropriate university office or department to resolve the report.
3. Request for Limited Action
 - a. When an incident of sexual misconduct is reported to the Title IX Coordinator, the reporting party has the right to:
 - i. Request the report or the reporting party's contact with the Title IX Coordinator not be disclosed to the responding party;
 - ii. Decline to personally identify the responding party;
 - iii. Decline to respond to communications from the Title IX Coordinator; and
 - iv. Request the university not investigate or stop an ongoing investigation that is not substantially complete.
 - b. The Title IX Coordinator evaluates a request for limited action in the context of the university's responsibility to provide a safe and nondiscriminatory environment for all individuals. The Title IX Coordinator considers these factors in the evaluation:
 - i. The seriousness of the alleged discriminatory conduct;
 - ii. The age of the individuals involved;

- iii. Whether there have been other reports of sexual misconduct against the accused individual(s);
 - iv. The risk the accused individual(s) will commit additional sexual misconduct; and
 - v. The rights of the accused individual(s) to receive information about the accuser(s) and the allegations if a formal proceeding with sanctions may result.
 - c. If the Title IX Coordinator honors the request for limited action, the university will endeavor to mitigate the effects of alleged sexual misconduct and prevent its recurrence, but remedial or disciplinary actions against individuals may be limited.
 - d. If the Title IX Coordinator does not grant a request for limited action, the Title IX Coordinator informs the reporting party of the decision prior to starting or continuing an investigation.
 - i. If the university must disclose the reporting party's identity to the responding party, the Title IX Coordinator notifies the reporting party of that determination prior to the disclosure.
 - ii. The university honors a request by the reporting party that the university inform the responding party the reporting party asked the university not to investigate or seek discipline.
 - e. Because the university is under a continuing obligation to address the issues of sexual misconduct campus-wide, reports of sexual misconduct may prompt the university to consider broader remedial action, such as increased monitoring, increased education and prevention efforts, additional climate surveys, and revisiting policies and practices.
- C. Informal Resolution
 - 1. Any party may request the university facilitate an informal resolution to a sexual misconduct report at any time after the university's initial assessment of a report. The Title IX Coordinator, at their discretion, may suggest an informal resolution to the parties at any time after the university's initial assessment of a report, too.
 - a. Upon a request for informal resolution, the Title IX Coordinator determines whether informal resolution is appropriate based on the facts and circumstances of the case. The Title IX Coordinator ensures that any proposed informal resolution is consistent with the university's obligations to prevent and redress sexual misconduct.
 - b. Sexual assault reports are not eligible for informal resolution.
 - 2. Informal resolution is voluntary.
 - a. The reporting party and the responding party must provide written consent for informal resolution to take place.
 - b. Any party has a right to end the informal process at any time and begin the formal process.

3. Informal resolution concludes the matter only when all parties have signed a written agreement that confirms resolution of sexual misconduct allegations.
 - a. The resolution agreement must include a waiver of the responding party's right, if any, to have a formal hearing on the allegations.
 - b. Neither the reporting party nor the responding party may revoke or appeal a resolution agreement.
4. If a resolution agreement is not reached, the university will proceed with a formal investigation.

D. Formal Investigation

1. The goal of a formal investigation is to reach a determination as to whether a responding party has violated one or more university policies prohibiting discrimination and unlawful harassment and if so, remedy the effects of a violation.
 - a. The Title IX Coordinator determines the nature and scope of investigations on a case-by-case basis. The Title IX Coordinator may include possible violations of other university policies that contributed to, arose from, or are otherwise related to alleged violations of this policy and procedure in the scope of an investigation.
 - b. The Title IX Coordinator designates two investigators to investigate and give written notice to the reporting party and responding party of the investigation, providing sufficient details to allow the parties to prepare for initial interviews.
 - c. A responding party may respond in writing to the notice of investigation within five business days following the date of receipt of the notice of investigation.
2. Parties to an investigation can expect a prompt, thorough, and equitable investigation of reports, including the opportunity for parties to ask questions, present witnesses and provide information regarding the allegations.
 - a. Students are not required to participate in an investigation.
 - i. If a student chooses not to participate in an investigation, the university's ability to respond fully or discipline individuals may be limited.
 - ii. Failure to respond or participate in an investigation will not prevent the completion of the investigation. The investigators make determinations based on the totality of the evidence available.
 - b. Employees are required to participate in an investigation. Failure or refusal to cooperate, or interference with, investigative proceedings may result in disciplinary action, up to and including termination.

3. The standard of proof used in investigations is preponderance of the evidence. It is the university's responsibility to establish the standard of proof and gather evidence during investigations.
4. The university aims to bring all investigations to a resolution within sixty (60) business days from the date the Title IX Coordinator determines an investigation will commence.
 - a. Extensions of timeframe for good cause are allowed, so long as written notice and the reason for the delay is provided to the parties. Good cause includes:
 - i. The complexity and/or number of the allegations;
 - ii. The severity and extent of the alleged misconduct;
 - iii. The number of parties, witnesses, and other types of evidence involved;
 - iv. The availability of the parties, witnesses, and evidence;
 - v. A request by a party to delay an investigation;
 - vi. The effect of a concurrent criminal investigation or proceeding;
 - vii. Intervening holidays, university breaks, or other closures;
 - viii. Good faith efforts to reach a resolution; or
 - ix. Other unforeseen circumstances.
 - b. Investigations typically include interviews with the reporting party, the responding party, and any witnesses, and the objective evaluation of any physical, documentary, or other evidence as appropriate and available. The university gives the reporting party and the responding party written notice of any interview, meeting, or hearing at which a party is invited or expected to participate.
 - c. The Title IX Coordinator informs the reporting party and responding party at regular intervals of the status of its investigation.
 - d. The university may suspend a student, employee, or organization pending the completion of an investigation and resolution, particularly when in the judgment of the Title IX Coordinator, the safety or well-being of any member(s) of the campus community may be jeopardized by the on-campus presence of the accused individual or organization.
 - i. In all cases in which an interim suspension is imposed, the student, employee, or organization are given the opportunity to meet with the Title IX Coordinator or their designee prior to such suspension to show cause why the suspension should not be implemented.
 - ii. The Title IX Coordinator, after consulting with appropriate university officials, has sole discretion to implement or stay an interim suspension and to determine its conditions and duration.
 - iii. Violation of an interim suspension under this policy is grounds for expulsion or termination.
5. Interviews conducted as part of an investigation under this policy and procedure may be recorded by the university. Recordings not authorized by the university are prohibited.

6. The reporting party and the responding party have the right to be accompanied by an advisor of their choosing during all stages of an investigation.
 - a. A party may elect to change advisors during the process.
 - b. All advisors are subject to the same rules:
 - i. The advisor's role is limited to providing advice, guidance, and support to the reporting party or responding party. An advisor is not permitted to act as a participant or advocate during the investigative process.
 - ii. Advisors may not address campus officials in a meeting, interview, or hearing unless invited to.
 - iii. Advisors are expected to maintain the privacy of the records shared with them.
 - iv. Advisors are expected to refrain from interfering with investigations.
 - v. Any advisor who steps out of their role during an investigation process are warned once. If the advisor continues to disrupt or otherwise fails to respect the limits of the advisor role, the advisor will be asked to leave. The Title IX Coordinator determines whether the advisor may return or should be replaced by a different advisor.
7. Prior to making a final determination, investigators prepare a preliminary report containing the statements of the parties and witnesses and relevant evidence.
 - a. The reporting party and the responding party receive a copy of the preliminary report simultaneously. The reporting party and the responding party are given equal access to evidence to the extent possible based on the circumstances of the investigation.
 - b. The reporting party and the responding party may submit written comments on the preliminary report within ten business days after receipt of the preliminary report.
 - i. Any comments must be submitted to the investigators via email, mail, or hand delivery by 5:00pm eastern standard time on the date comments are due.
 - ii. Comments may not exceed 10 double-spaced pages on 8.5x11 paper with one-inch margins and 12-point font.
 - c. The investigators consider any comments received from the parties and conduct any further investigation necessary or appropriate.
8. Following an investigation, investigators prepare a final report that includes findings and recommendations as to whether a responding party should be found in violation of university policy.
 - a. The final report includes:
 - i. A summary of the allegations;
 - ii. A summary of the response;
 - iii. A summary of the investigative steps taken to verify the allegations and response;

- iv. A determination of whether the evidence supports a finding that a violation of university policy occurred;
 - v. The facts and evidence on which such determination is based; and
 - vi. Any recommendations regarding disposition.
 - b. The reporting party and the responding party receive simultaneous notice of the investigators' final report.
 - c. Appropriate ETSU administrator(s) receive the final report and are responsible for deciding whether the responding party violated one or more university policies.
- 9. The university's actions to correct and prevent the recurrence of any policy violations may include taking disciplinary action, up to and including termination or expulsion from the university. ETSU policies and procedures applicable to disciplinary processes include due process protections and may be found here:
 - a. Student disciplinary policies:
 - i. ETSU Undergraduate Catalog
 - ii. ETSU Graduate Catalog
 - iii. Conduct Process Flowchart
 - iv. Pre-Hearing Information
 - v. Post-Hearing and Appeals Information
 - b. Faculty:
 - i. Faculty Handbook
 - ii. [Tenure](#)
 - c. Staff:
 - i. [PPP-70 Progressive Disciplinary Procedures](#)
 - d. Reporting parties and responding parties are afforded similar and timely access to any documents and information used in a university disciplinary action, including any investigative report.
 - e. If the final decision-maker(s) find a violation of this policy and procedure, any written determinations must describe:
 - i. Remedies the university will provide to the reporting party to restore or preserve the reporting party's access to an education program, activity, or employment; and
 - ii. Sanctions imposed on the responding party.

10. Withdrawal or Resignation

- a. If a student under investigation for an alleged violation of this policy withdraws or graduates from the university before a resolution, the university may:

- i. Continue its investigation;
 - ii. Impose a campus ban on the student; and/or
 - iii. Place a notation on the student’s academic transcript that states: “Withdrew while under investigation for an alleged violation of East Tennessee State’s Policy on Sexual Misconduct.”
 - iv. A student is not permitted to re-enroll in East Tennessee State University unless all sanctions, if any, have been satisfied.
- b. If an employee under investigation for an alleged violation of this policy resigns employment from the university before a resolution, the university may:
- i. Continue its investigation and/or
 - ii. Impose a campus ban on the employee.

Procedure History

Effective Date:

Revision Date:

Related Form(s)

Scope and Applicability

Primary: Students, Employment

Secondary: Academic, Health and Safety, Operations and Facilities



ADA and Section 504 Grievance Procedure

Responsible Official: University Counsel

Responsible Office: Office of University
Compliance

Policy Purpose

The purpose of this policy is to ensure thorough and fair investigations and prompt and equitable resolution of reports alleging any conduct prohibited by Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act of 1990, both as amended.

Policy Statement

East Tennessee State University (ETSU) prohibits and seeks to eliminate all forms of disability-based discrimination in education programs, housing, and employment. ETSU has a responsibility to respond promptly and effectively to disability-based discrimination about which ETSU knows or reasonably should know. ETSU employees, students, and applicants for admission or enrollment can report disability-based discrimination without fear of adverse consequences and the university will be responsive to reports.

A. Scope and Applicability

1. This policy and procedure applies to the conduct of and protects:
 - a. ETSU students
 - b. ETSU employees
 - c. Applicants for admission at ETSU
 - d. Applicants for employment at ETSU
2. Issues that are grievable include but are not limited to:
 - a. A denial of a requested accommodation;
 - b. Inaccessibility of a university program or activity due to disability;
 - c. Harassment or discrimination on the basis of disability; or
 - d. Any other alleged university violation of the Americans with Disabilities Act or the Rehabilitation Act.

3. A student or employee who has been denied a requested accommodation or otherwise disagrees with an accessibility services accommodation decision is encouraged – but not required – to discuss their concern with the ADA/504 Coordinator.
4. This policy and procedure applies to all disability-based discrimination reported to have occurred on or after the effective date of this policy.
 - a. If disability-based discrimination reportedly occurred prior to the effective date, the report will be evaluated using definitions contained in ETSU policies in effect at the time of the alleged discrimination. Procedures regarding the university's response to the report will be based on this policy and procedure.
 - b. If disability-based discrimination reportedly occurred in a time period spanning more than one year, the report will be evaluated using definitions contained in ETSU policies in effect at the time of the most recent alleged discrimination. Procedures regarding the university's response to the report will be based on this policy and procedure.
5. This policy and procedure takes precedence over other university, college, or departmental policies and procedures concerning disability-based discrimination in the event of a conflict.
6. The university encourages students and employees to use the procedures in this policy before pursuing remedies outside the university, but the availability and use of this policy and procedure does not prevent a person from pursuing other remedies:
 - a. Students may file complaints of discrimination or retaliation on the basis of disability with the [Office for Civil Rights](#) in the United States Department of Education or the [Department of Justice](#).
 - b. Employees may file complaints of discrimination or retaliation on the basis of disability with the [Equal Employment Opportunity Commission](#), the [Office for Civil Rights](#) in the United States Department of Education, or [Tennessee Human Rights Commission](#).

B. Retaliation

1. Retaliation is prohibited against any individual who files a report, participates in a discrimination inquiry, investigation, hearing, or proceeding, or is regarded as filing a report or participating in a discrimination inquiry, investigation, hearing, or proceeding.
 - a. Individuals involved in investigations or disciplinary proceedings are encouraged to exercise discretion in sharing information to safeguard the integrity of the process and to avoid the appearance of retaliation.
 - b. While discretion regarding the process is important, reporting parties and responding parties are not restricted from discussing and sharing information with others who may support or assist them during the process.

2. Retaliation is also prohibited against any individual who advocates for others' disability-based discrimination rights.
3. Retaliation is a violation of this policy regardless of whether the underlying allegation of a violation of this policy is ultimately found to have merit. Reports of retaliation will be treated separately from initial reports of alleged discriminatory conduct.

C. False Reports

1. A person who makes a report of disability-based discrimination or who provides false information to the university that is found to be intentionally false or made maliciously without regard for truth may be subject to disciplinary action.
2. This provision does not apply to reports made in good faith, even if an investigation does not find a policy violation.

D. ETSU Responsibilities

1. Once ETSU has notice of possible disability-based discrimination, ETSU will take immediate and appropriate steps to investigate or otherwise determine what occurred and take prompt and effective steps reasonably calculated to end any discrimination, eliminate any hostile environment and its effects, and prevent discrimination from recurring.
2. These steps are ETSU's responsibility even if the misconduct is covered by a separate ETSU policy and regardless of whether the individual harassed makes a report, asks ETSU to take action, or identifies the harassment as a form of discrimination.

E. Family Educational Rights and Privacy Act (FERPA)

1. A student's personally identifiable information found in the student's education records will be shared only with university employees who need to know to assist with the university's response to disability-based discrimination.
2. A student's personally identifiable information found in the student's education records will not be disclosed to third parties unaffiliated with the university unless:
 - a. The student gives consent;
 - b. The university must respond to a lawfully issued subpoena or court order; or
 - c. The university is otherwise required by law to disclose.

F. Conflicts of Interest

1. All ETSU employees involved in the investigative and resolution process described in this policy and procedure are prohibited from real or perceived conflicts of interest.

2. A reporting party or responding party may raise bias or a conflict of interest regarding ETSU employees involved in the investigative and resolution process at any time prior to an investigative report being issued.
 - a. Reports of bias or conflict of interest of investigators should be made to the Compliance Officer, who will make a final determination as to whether bias or a conflict of interest exists.
 - b. Reports of bias or conflict of interest of the Compliance Officer should be made to ETSU's Compliance Counsel, who will make a final determination as to whether bias or a conflict of interest exists.

G. Accommodations as part of Grievance Process

1. ETSU will make appropriate arrangements to ensure that disabled persons are provided reasonable accommodations, if needed, to participate in the grievance process. Such arrangements may include:
 - a. Allowing additional time to review reports
 - b. Providing reports in accessible formats
 - c. Permitting the presence of emotional support animals at interviews
 - d. Allowing ASL interpreters, communications support, or other assistive technologies
 - e. Assuring a barrier-free location for the proceedings.
2. The Director of Disability Services will be responsible for such arrangements.
3. To maintain due process, ETSU will inform all parties of the accommodations provided and provide the option of the same or similar accommodations to all parties.

Definitions

Disability	A physical or mental impairment that substantially limits one or more major life activities, having a history or record of such an impairment, or being regarded as having such an impairment.
Discrimination	For purposes of this policy, discrimination means treating someone differently based on an individual's disability when such treatment adversely affects a term, condition, or privilege of employment or participation in a university program, activity, or living environment, or having a policy or practice that has a disproportionate adverse impact on individuals with disabilities.

Harassment:	A form of discrimination. Unwelcome conduct based on an individual's actual or perceived disability that has the purpose or effect of creating a hostile environment.
Hostile environment	Unwelcome conduct that is so severe, pervasive, and objectively offensive that it denies or limits an individual's ability to participate in or benefit from one's employment or a university educational program or activity. Conduct is considered from a subjective and an objective perspective based on the totality of the circumstances. Creating a hostile environment is a form of harassment.
Informal resolution	A resolution that is reached regarding a claim of disability-based discrimination without a formal investigation finding. Informal resolution may include mediation, facilitated dialogue, conflict coaching, restorative justice, or other models of alternative dispute resolution.
Preponderance of the evidence	Whether it is more likely than not that the responding party violated this policy and procedure by engaging in disability-based discrimination. In a university disciplinary proceeding, the university has the burden of proving violations of university policy by a preponderance of the evidence.
Protected activity	A person's good faith opposition to or report of disability-based discrimination or assisting a person who opposes or reports disability-based discrimination to the university, the police, or a state or federal agency. Protected activity also includes participation in a disability-based discrimination inquiry, including an investigation, proceeding, or hearing.
Reasonable accommodations	Modifications in policies, practices, or procedures that are necessary to afford service to students or employees with disabilities unless the accommodations would fundamentally alter the nature of the service or create an undue hardship.
Report	Information provided to the Director of Disability Services or Compliance Officer regarding an incident of disability-based discrimination, whether provided by a reporting party, a responding party, a witness, or third party.
Reporting party	A person(s) who may have been subject to disability-based discrimination regardless of whether that person(s) makes a report or seeks action under this policy.
Responding party	A person(s) who is accused of committing disability-based discrimination.
Retaliation	An adverse action taken because of a person's participation in a protected activity that would discourage a reasonable person from engaging in the protected activity.

Authority: Section 504 of the Rehabilitation Act of 1973 (amended); the Americans with Disabilities Act of 1990 (amended)

Policy History

Effective Date:

Revision Date:

Procedure (s)

I. Reporting Options

A. Office of University Compliance

1. The university's Office of University Compliance oversees compliance with all aspects of the university's policy against disability-based discrimination.
2. Reports or complaints of disability-based discrimination may be filed with ETSU's Compliance Officer by contacting 423-439-8545 or compliance@etsu.edu. The Compliance Officer is also accessible for consultation and assistance about reporting options.
3. Individuals may also report disability-based discrimination to ETSU's Director of Disability Services.
4. Reports should be filed as soon as possible, but in no event later than 360 calendar days of the last incident of discrimination or violation of policy.
 - a. Reports brought after that time period will not be pursued absent extraordinary circumstances.
 - b. The Compliance Officer will determine whether a report was timely or whether extraordinary circumstances exist in conjunction with ETSU Compliance Counsel.

B. Confidentiality

1. Information communicated to the Compliance Officer or Director of Disability Services will not be confidential, but will be kept private, which means information will initially be shared only with university employees who need to be involved in responding to a report.
 - a. Individuals are free to limit the details they share while they decide whether to report an incident of disability-based discrimination to the university.
 - b. ETSU will take all reasonable steps to investigate and respond to a report consistent with a request for confidentiality as long as doing so does not prevent the university from responding effectively to disability-based discrimination and preventing discrimination of other individuals.

I. Grievance Procedure

A. Scope

1. Use of this grievance procedure applies to reports alleging disability-based discrimination carried out by employees, students, or third parties.
2. All reports of disability-based discrimination are taken seriously. At the same time, those accused of disability-based discrimination are presumed innocent throughout this grievance procedure.
3. After receiving a report of disability-based discrimination, the Compliance Officer takes immediate and appropriate steps to:
 - a. Communicate with the individual who reported the alleged discriminatory conduct;
 - b. Provide the individual with a copy of this policy and procedure; and
 - c. Determine whether the alleged conduct, as described by the individual reporting the conduct, falls within the scope of this policy and if so, initiate the investigation and resolution procedures outlined below.
4. The Compliance Officer has discretion to administratively close a report of disability-based discrimination if after an initial assessment:
 - a. The allegations as stated do not constitute a violation of this policy and procedure; or
 - b. The report is untimely and extraordinary circumstances do not exist.
5. If the allegations as stated do not constitute a violation of this policy, the Compliance Officer notifies the reporting party and directs them to the appropriate university office or department to resolve the report.

B. Denial of Requests for Accommodation

1. Students, employees, or applicants for admission or employment who disagree with a decision regarding a request for accommodation may seek informal review of such decision by contacting the Director of Disability Services.
2. Requests for review of an accommodation decision should be made promptly, and in any event within 30 days of the decision being made, unless the student, employee, or applicant for admission or employment can show good cause for the delay.
3. The Director of Disability Services conducts a thorough review of the request. If a request for review of an accommodation decision is resolved through an informal process, the matter will be closed.

4. If the Director of Disability Service's informal review is unsuccessful, the Director of Disability Services informs the person of their efforts and the person's right to make a report of a denial of a request for accommodation with the Office of University Compliance.
 - a. The Compliance Officer reviews a denial of a request for accommodation within 7 business days of receiving a report of a denial of a request for accommodation.
 - b. The Compliance Officer's decision on the matter is final.

C. Requests for Informal Resolution

1. Requests for informal resolution of reports of discrimination may be made to the Compliance Officer in the Office of University Compliance.
2. Informal resolution is voluntary and may be ended by any party at any time before its completion. If an informal resolution process is ended by any party, information obtained may be used in a subsequent formal resolution process.
3. Informal resolution concludes the matter only when all parties have signed a written agreement that confirms resolution of disability-based discrimination allegations.
 - a. The resolution agreement includes a waiver of the responding party's right, if any, to have a formal hearing on the allegations.
 - b. Neither the reporting party nor the responding party may revoke or appeal a resolution agreement.
4. If a resolution agreement is not reached, the allegations against the responding party proceed with a formal investigation.

II. Formal Investigations

A. General

1. The goal of a formal investigation is to reach a determination as to whether a responding party has violated one or more university policies prohibiting discrimination and harassment and if so, remedy the effects of a violation.
 - a. The Compliance Officer determines the nature and scope of investigations on a case-by-case basis. The Compliance Officer may include possible violations of other university policies that contributed to, arose from, or are otherwise related to alleged violations of this policy and procedure in the scope of an investigation.
 - b. The Compliance Officer gives written notice to the reporting party and responding party of the investigation, providing sufficient details to allow the parties to prepare for initial interviews, and designate two investigators to investigate.

- c. A responding party may respond in writing to a notice of investigation within five business days following the date of receipt of the notice of investigation.
2. Parties to an investigation can expect a prompt, thorough, and equitable investigation of reports, including the opportunity for parties to ask questions, present witnesses, and provide information regarding the allegations.
 - a. Students are not required to participate in an investigation.
 - i. If a student chooses not to participate in an investigation, the university's ability to respond fully or discipline individuals may be limited.
 - ii. Failure to respond or participate in an investigation will not prevent the completion of the investigation. The investigators will make determinations based on the totality of the evidence available.
 - b. Employees are required to participate in an investigation. Failing or refusing to cooperate or interfering with investigative proceedings may result in disciplinary action, up to and including termination.
3. The standard of proof used in investigations is preponderance of the evidence. It is the university's responsibility to establish the standard of proof and gather evidence during investigations.

B. Investigation

1. The university aims to bring all investigations to a resolution within sixty (60) business days from the date the Compliance Officer determines an investigation will commence.
 - a. Extensions of timeframe for good cause are allowed, so long as written notice and the reason for the delay is provided to the parties. Good cause includes:
 - i. The complexity and/or number of the allegations;
 - ii. The severity and extent of the alleged misconduct;
 - iii. The number of parties, witnesses, and other types of evidence involved;
 - iv. The availability of the parties, witnesses, and evidence;
 - v. A request by a party to delay an investigation;
 - vi. The effect of a concurrent criminal investigation or proceeding;
 - vii. Intervening holidays, university breaks, or other closures;
 - viii. Good faith efforts to reach an agreed-upon resolution; or
 - ix. Other unforeseen circumstances.
 - b. Investigations typically include interviews with the reporting party, the responding party, and any witnesses, and the objective evaluation of any physical, documentary, or other evidence as appropriate and available.
 - i. The university gives the reporting party and the responding party written notice of any interview, meeting, or hearing at which a party is invited or expected to participate.

- c. The Compliance Officer informs the reporting party and responding party at regular intervals of the status of its investigation.
2. Interviews conducted as part of an investigation under this policy and procedure may be recorded by the university. Recordings not authorized by the university are prohibited.
3. The reporting party and the responding party have the right to be accompanied by an advisor of their choosing during all stages of an investigation.
 - a. A party may elect to change advisors during the process.
 - b. All advisors are subject to the same rules:
 - i. The advisor's role is limited to providing advice, guidance, and support to the reporting party or responding party. An advisor is not permitted to act as a participant or advocate during the investigative process.
 - ii. Advisors may not address campus officials in a meeting, interview, or hearing unless invited to.
 - iii. Advisors are expected to maintain the privacy of the records shared with them.
 - iv. Advisors are expected to refrain from interference with investigations.
 - v. Any advisor who steps out of their role during an investigation process will be warned once. If the advisor continues to disrupt or otherwise fails to respect the limits of the advisor role, the advisor will be asked to leave. The Compliance Officer determines whether the advisor may return or should be replaced by a different advisor.
4. Prior to making a final determination, investigators prepare a preliminary report containing the statements of the parties and witnesses and relevant evidence.
 - a. The reporting party and the responding party receive a copy of the preliminary report simultaneously. The reporting party and the responding party are given equal access to evidence to the extent possible based on the circumstances of the investigation.
 - b. The reporting party and the responding party may submit written comments on the preliminary report within ten business days after receipt of the preliminary report.
 - i. Any comments must be submitted to the investigators via email, mail, or hand delivery by 5:00pm eastern standard time on the date comments are due.
 - ii. Comments may not exceed 10 double-spaced pages on 8.5x11 paper with one-inch margins and 12-point font.
 - c. The investigators consider any comments received from the parties and will conduct any further investigation necessary or appropriate.
5. Following an investigation, investigators prepare a final report that includes findings and recommendations as to whether a responding party should be found in violation of university policy.

- a. The final report includes:
 - i. A summary of the allegations;
 - ii. A summary of the response;
 - iii. A summary of the investigative steps taken to verify the allegations and response;
 - iv. A determination of whether the evidence supports a finding that a violation of university policy occurred;
 - v. The facts and evidence on which such determination is based; and
 - vi. Any recommendations regarding disposition.
 - b. The reporting party and the responding party will receive simultaneous notice of the investigators' final report.
 - c. Appropriate ETSU administrator(s) receive the final report and are responsible for deciding whether the responding party violated one or more university policies.
6. The university's actions to correct and prevent the recurrence of any policy violations may include taking disciplinary action, up to and including termination or expulsion from the university. ETSU policies and procedures applicable to disciplinary processes include due process protections and may be found here:
- a. Student disciplinary policies:
 - i. ETSU Undergraduate Catalog
 - ii. ETSU Graduate Catalog
 - iii. Conduct Process Flowchart
 - iv. Pre-Hearing Information
 - v. Post-Hearing and Appeals Information
 - b. Faculty:
 - i. [Faculty Progressive Discipline Policy](#)
 - ii. [Tenure](#)
 - c. Staff:
 - i. [PPP-70 Progressive Disciplinary Procedures](#)

Procedure History

Effective Date:

Revision Date:

Related Form(s)

Scope and Applicability

Primary: Students, Employment

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