

MILLIGAN

Sexual Misconduct Policy

Revised January 1, 2021

I. Policy Overview:

- A. Milligan University is committed to providing students, faculty, staff, visitors and all other members of the university community with a positive, healthy environment conducive to the promotion of the university's core values of scholarship, community, and faith. Milligan University, as a private, Christian university, expects members of the campus community, including students, faculty, and staff, to comply with the standards of conduct outlined in the student, personnel and faculty handbooks.
- B. Title IX of the Educational Amendments of 1972 (Title IX) prohibits discrimination on the basis of sex in education programs or activities. Discrimination occurs when the individual's ability to participate in or to receive benefits, services, or opportunities of the school's program is denied or limited. Sexual harassment, including sexual violence, is a form of sex discrimination.
- C. The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act) and the Violence Against Women Reauthorization Act of 2013 (VAWA) require institutions of higher education receiving federal funds to disclose policy statements addressing sexual assault, domestic violence, dating violence, and stalking, programs to prevent sexual assault, domestic violence, dating violence, and stalking, procedures followed by the institution when incidents of sexual assault, domestic violence, dating violence, and stalking are reported, written information provided to victims of sexual assault, domestic violence, dating violence, and stalking, and procedures for disciplinary action conducted when sexual assault, domestic violence, dating violence, and stalking are reported.
- D. Due to the university's commitment to an educational atmosphere free of sexual discrimination, harassment, or violence, and in accordance with the requirements set forth in Title IX and the Clery Act/VAWA, all forms of sexual misconduct, including sexual harassment, sexual assault, domestic violence, dating violence, and stalking are prohibited and will not be tolerated at Milligan University.
- E. Regulations amending Title IX issued May 19, 2020 in volume 85, number 97 of the Federal Register prescribe specific definitions and procedures under which institutions of higher education (IHEs) receiving federal funds are required to operate beginning August 14, 2020. This policy incorporates those required definitions and procedures. Reports of sexual misconduct not meeting the parameters outlined in those regulations will be referred to the university's conduct policies for students, faculty and staff.

II. Policy Scope and Effective Date:

- A. This policy applies to all students, employees, applicants for admission or employment, and other relevant persons.
- B. This policy applies to all acts of sexual harassment, as defined in the May 19, 2020 Title IX regulations. In these regulations, the term sexual harassment is used broadly and includes sexual assault, domestic violence, dating violence and stalking as defined in the Clery Act/VAWA. For the purposes of this policy,

when the term “sexual harassment” is used, it refers to all conduct and activity falling within this definition (see pages 3-7).

- C. The effective date of this revised policy is January 1, 2021. This policy will apply to all prohibited conduct reported to have occurred on or after January 1, 2021. Prohibited conduct reported to have occurred before January 1, 2021 will be evaluated based on the university policy in place at the time of the reported prohibited conduct.

III. Title IX Coordinator

- A. The university’s Title IX Coordinator is responsible for coordinating the university’s response to all reports involving sexual harassment referenced in this policy and developing and disseminating the university’s sexual harassment policies and grievance procedures, thus ensuring the university’s compliance with Title IX and its implementing regulations in all areas.
- B. While the Title IX Coordinator is responsible for ensuring the university’s grievance procedures are followed and effectively administered when actual notice is received, other university officials or qualified third parties engaged by the university may be engaged during this process and/or conduct assessments and coordinate grievance procedures in accordance with this policy and other university policies at the direction of and/or in consultation with the Title IX Coordinator.
 - 1. Third-party investigators, decision-makers, and decision-makers for appeals will have training and experience conducting investigations, hearings and appeals of allegations of sexual harassment.
- C. Brent Nipper is the Title IX Coordinator for Milligan University and can be reached at 423-461-8740 or at wbnipper@milligan.edu. The Title IX Coordinator’s office is located in the Little Hartland Welcome Center, 1 Blowers Boulevard, Milligan University, TN 37682.

IV. Definitions

Actual Knowledge: Notice of sexual harassment or allegations of sexual harassment to the Title IX Coordinator or any official of the institution who has authority to institute corrective measures on behalf of the university.

Complainant: An individual who is alleged to be the victim of conduct that could constitute sexual harassment.

Formal Complaint: A document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the university investigate the allegation of sexual harassment.

- Formal complaints can only be filed by complainants participating in or attempting to participate in

the education program or activity of the university at the time the complaint is filed.

Respondent: An individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

Sexual Harassment (Quid Pro Quo): Conduct on the basis of sex in which an employee of the university conditions the provision of an aid, benefit, or service of the university on an individual's participation in unwelcome sexual conduct

Sexual Harassment (Hostile Environment): Unwelcome conduct of a sexual nature determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the university's education program or activity

Sexual Assault as defined in 20 U.S.C. 1092(f)(6)(A)(v):

- Sex Offenses, Forcible—Any sexual act directed against another person, without the consent of the victim including instances where the victim is incapable of giving consent.
 - Forcible Rape—(Except Statutory Rape) The carnal knowledge of a person, forcibly and/or against that person's will or not forcibly or against the person's will in instances where the victim is incapable of giving consent because of his/her temporary or permanent mental or physical incapacity.
 - Forcible Sodomy—Oral or anal sexual intercourse with another person, forcibly and/or against that person's will or not forcibly or against the person's will in instances where the victim is incapable of giving consent because of his/her youth or because of his/her temporary or permanent mental or physical incapacity.
 - Sexual Assault With An Object—To use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, forcibly and/or against that person's will or not forcibly or against the person's will in instances where the victim is incapable of giving consent because of his/her youth or because of his/her temporary or permanent mental or physical incapacity.
 - Forcible Fondling—The touching of the private body parts of another person for the purpose of sexual gratification, forcibly and/or against that person's will or not forcibly or against the person's will in instances where the victim is incapable of giving consent because of his/her youth or because of his/her temporary or permanent mental or physical incapacity.
- Sex Offenses, Nonforcible—Unlawful, nonforcible sexual intercourse.
 - Incest—Nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
 - Statutory Rape—Nonforcible sexual intercourse with a person who is under the statutory age of consent

Dating Violence: as defined in 34 U.S.C. 12291(a)(10):

- Violence committed by a person—who is or has been in a social relationship of a romantic or intimate nature with the victim; and where the existence of such a relationship shall be determined based on a consideration of the following factors: the length of the relationship, the type of relationship, the frequency of interaction between the persons involved in the relationship.

Domestic Violence as defined in 34 U.S.C. 12291(a)(8):

- Felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.

Stalking as defined in 34 U.S.C. 12291(a)(30):

- Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others; or suffer substantial emotional distress.

Supportive Measures: Non-disciplinary, non-punitive individualized services which are:

- Offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed
- Designed to restore or preserve equal access to the university's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the university's educational environment, or deter sexual harassment
- May include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures when such measures are reasonably available.
- Maintained as confidential by the university to the extent that maintaining such confidentiality would not impair the ability of the university to provide the supportive measures.
- The Title IX Coordinator or individuals designated by the Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures

Consent: The agreement to engage in sexual activity, which is voluntary (consent is not possible when coercion, force, or threat is present), aware (consent is impossible when incapacitation occurs for any reason), clear (silence or absence of resistance does not imply consent), immediate (past consent does not imply future consent), continuous (consent can be withdrawn at any time), and specific (consent with one person does not imply consent with others). Understanding consent is an essential part of engaging in healthy relationships and the prevention and awareness of sexual harassment, sexual assault, domestic violence, dating violence, and stalking.

V. Reporting Procedures

- Confidential Reporting:** In cases in which the complainant does not wish to make an official report or for the university to take action as a result of the report of sexual harassment, counselors in the university counseling center and the university's campus minister can maintain the complainant's confidentiality and not report the sexual harassment to university officials, law enforcement, or any other third parties. Limited exceptions preclude confidential employees maintaining a complainant's confidentiality, such as reports involving minors, imminent harm to self and others, or when not reporting prohibited conduct

violates state or federal laws and/or professional ethical obligations. These confidential employees can help a complainant understand options for reporting and the procedures followed by university officials when an official report is made. Complainants initially requesting confidentiality from a confidential employee may later decide to report the sexual harassment to university officials or law enforcement and/or pursue a formal complaint with the university.

- B. **Mandatory Reporting**: All other university employees are mandatory reporters and have a duty to report disclosures of sexual harassment to the Title IX Coordinator or their area vice president. Reporting parties may want to consider carefully whether they share personally identifiable details with non-confidential employees, as all relevant details must be shared in the employee's report to the Title IX Coordinator or area vice president.
- C. **Receipt of Report**: The university officially receives a report when actual notice is given to the Title IX Coordinator or any official of the university who has authority to institute corrective measures on behalf of the university. Such a report may be made at any time (including during non-business hours) by using the telephone number or email address, or by mail to the office address, listed for the Title IX Coordinator.
- D. **Amnesty Policy**: Although the university expects students to follow all conduct policies laid out in the Student Handbook, violations of drug, alcohol or visitation policies discovered from reports or during investigations of sexual assault, domestic violence, dating violence or stalking will not result in disciplinary sanctions for:
- Complainants reporting to or seeking help from university officials and/or
 - Individuals making reports on behalf of other individuals they believe to be victims of sexual assault, domestic violence, dating violence or stalking when the individual making the report is actively involved in helping the person they believe to be a victim.

Each report covered by this amnesty policy will be evaluated to decide if drug, alcohol, or other educational sanctions would be beneficial for the student involved, and such educational sanctions will be administered when determined to be necessary or helpful. Amnesty may not be extended in cases where violations are already being investigated at the time of the report. Amnesty may also be extended to complainants and reporting third parties reporting incidents of sexual harassment and, when such reports are found to create a threat to the safety of individuals or the campus or threaten to deprive any member of the campus community from full participation in the educational program and/or activities of the university.

- E. **Filing a Report With Law Enforcement Authorities**: The complainant has the option, but is not required, to file a report with the Elizabethton Police Department (EPD). If the complainant so chooses, campus authorities will provide assistance in notifying the EPD. If the complainant chooses to report the incident to the police, the university will cooperate fully in any investigation and prosecution of offenders who will be subject to all applicable legal sanctions under local, state, or federal laws. The EPD can be contacted by dialing 911 or 423-542-4141.

- F. **Preserving Evidence**: Complainants are encouraged to seek medical attention at a local hospital to identify any injuries and/or health concerns and to preserve evidence. Complainants should understand that seeking medical attention at a hospital may lead to the notification of law enforcement authorities by the hospital. The complainant can choose whether or not he or she wishes to talk to the authorities if they are contacted.
- G. **No Contact Orders and Orders of Protection**: Where applicable, university authorities will issue mutual no contact orders to students reported to be involved in incidents of sexual misconduct. University authorities will also assist the complainant in contacting the authorities to pursue orders of protection, at the victim's request.

VI. Report and Initial Assessment

- A. The Title IX Coordinator is responsible for coordinating the university's response to all complaints involving acts of sexual harassment as defined in this policy and Title IX and its implementing regulations.
- B. When the university receives actual knowledge of sexual harassment in an education program or activity (locations, events, or circumstances over which the university exercised substantial control over both the respondent and the context in which the sexual harassment occurs) in the United States, The Title IX Coordinator will promptly contact the complainant to discuss the availability of supportive measures, consider the complainant's wishes with respect to supportive measures, inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, and explain to the complainant the process for filing a formal complaint (initial assessment).
- C. During the initial assessment, the Title IX Coordinator will evaluate the allegations and determine if the conduct alleged in the report constitutes sexual harassment as defined by this policy and Title IX and its implementing regulations, occurred in the university's education program or activity, and occurred against a person in the United States to insure report being assessed falls within the parameters of Title IX and its implementing regulations and this policy. If any of these conditions are not met, the conduct alleged in the report may be reported to the Dean of Students, Academic Dean, or Director of Human Resources for further evaluation and investigation, if deemed necessary.
 - 1. When incidents of sexual assault, domestic violence, dating violence or stalking are reported, the reporting party will be provided with written notification about options for, available assistance in, and how to request changes to academic, living, transportation, and working situations or protective measures. Such accommodations and protective measures will be provided if they are deemed necessary by university officials and/or requested by the complainant and if they are reasonably available, regardless of whether the complainant chooses to file a formal complaint, report to law enforcement or makes a request for their name or other personally identifiable information not to be shared; and about existing counseling, health, legal assistance, visa, and immigration assistance, student financial aid and other services available for victims, both within the university and in the community. (See Appendix A: Rights and Options of Victims of Sexual Assault, Dating Violence, Domestic Violence, and Stalking).

- D. The university will respond promptly in a manner that is not deliberately indifferent (clearly unreasonable in light of the known circumstances).
- E. If a complainant does not wish for their name or other personally identifiable information to be shared, does not want an investigation to take place, or does not want a formal complaint to be pursued, the complainant may make such written requests to the Title IX Coordinator or other school official during the initial assessment. The Title IX Coordinator or other school official conducting the initial assessment will evaluate such requests in the context of providing a safe and nondiscriminatory environment for all students, including the student who reported the prohibited conduct. Therefore, such requests are strongly considered, but not guaranteed. Factors that may lead to the denial of such requests include, but are not limited to, the severity of the reported conduct, a pattern of prohibited conduct by the same individual, and/or the use of force, threat, weapons or violence during the reported prohibited conduct. The complainant will be informed if such request is denied. When such requests are denied, the Title IX Coordinator may sign a formal complaint to initiate a grievance process.
- F. Emergency Removal: The university may remove a respondent from its education program or activity on an emergency basis, provided that the university first undertakes an individualized safety and risk analysis, determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal, and provides the respondent with notice and an opportunity to challenge the decision immediately following the removal.
- G. Administrative Leave: The university may place a non-student employee respondent on administrative leave during the pendency of a grievance process.
- H. The University is required by the Clery Act to disclose statistics relating to certain crimes reported on campus. All reports of Clery Act crimes, including sexual assault, dating violence, domestic violence and stalking, occurring on campus or in university owned or controlled locations off campus are statistically included in Clery Act reporting obligations and the university's annual security report. However, statistical reporting does not include any personally identifiable information.
- I. The Title IX Coordinator, investigator(s) and all other university officials or third parties engaged by the university involved in cases of sexual harassment, sexual assault, dating violence, domestic violence, and stalking will make every effort to maintain as confidential any accommodations or protective measures provided to reporting parties, to the extent that maintaining such confidentiality does not impair the ability of the university to provide the accommodations and protective measures, and conduct investigations in accordance with university policies. Only a small group of officials who need to know will be told details of reports and investigations. The circle of people with this knowledge will be kept as tight as possible to preserve the rights and privacy of all parties involved.

VII. Grievance Process for Formal Complaints

- A. When a formal complaint is filed in writing by the complainant or Title IX Coordinator, the university will follow a grievance process that complies with 10 core requirements of Title IX and its implementing regulations:
 - 1. The grievance process will treat complainants and respondents equally by providing remedies to a complainant where a determination of responsibility for sexual harassment has been made against the respondent, and by completing the grievance process before the imposition of any

disciplinary sanctions or other actions, aside from supportive measures (as defined above) against a respondent.

- a. Remedies are designed to restore or preserve equal access to the university's education program or activity and may include supportive measures similar to those listed in the definitions section of this policy. When a finding of a violation of this policy is made, remedies need not be non-disciplinary or non-punitive and need not avoid burdening the respondent.
2. The grievance process includes an objective evaluation of all relevant evidence – including both inculpatory (favorable to complainant) and exculpatory (favorable to respondent) evidence and provides that credibility determinations are not be based on a person's status as a complainant, respondent, or witness.
3. Any individual designated as the Title IX Coordinator, investigator, decision-maker, or any person designated to facilitate an informal resolution process will not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent. Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process receive training on the definition of sexual harassment (see definitions), the scope of the university's education program or activity, how to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias. Decision-makers receive training on any technology to be used at a live hearing and on issues of relevance of questions and evidence, including when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant. Investigators receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence. Any materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, does not rely on sex stereotypes and promotes impartial investigations and adjudications of formal complaints of sexual harassment.
 - a. All investigations of reports of sexual assault, domestic violence, dating violence or stalking will be conducted by officials who receive annual training on issues related to sexual harassment, domestic violence, dating violence, sexual assault, and stalking, and how to conduct an investigation and hearing process that protects the safety of victims and promotes accountability. Both parties will be given the same opportunity to present witnesses and evidence.
4. The respondent is and must be presumed not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.
5. The grievance process includes reasonably prompt time frames for conclusion of the grievance process, including reasonably prompt time frames for filing and resolving appeals and informal resolution processes, and a process that allows for the temporary delay of the grievance process or the limited extension of time frames for good cause with written notice to the complainant and the respondent of the delay or extension and the reasons for the action.
 - a. Good cause may include considerations such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities.

6. The grievance process must describe the range of possible disciplinary sanctions and remedies or list the possible disciplinary sanctions and remedies that the university may implement following any determination of responsibility. The range of disciplinary sanctions applicable to this policy includes warnings, reprimands, suspension and termination of employment for university employees. For students, the range of sanctions includes general sanctions, warnings, counseling, reprimand, campusing, community service, restitution/apology, exclusion from extra-curricular activities, suspension, expulsion, and interim suspension.
7. The standard of proof used in the determinations of findings of all formal complaints will be the preponderance of the evidence standard (it is more likely than not that a policy violation occurred). The same standard will be applied for formal complaints against students as for formal complaints against employees, including faculty, and apply the same standard of evidence to all formal complaints of sexual harassment;
8. The grievance process includes the procedures and bases for the complainant and respondent to appeal (see section XIV: Appeals).
9. The grievance process describes the range of supportive measures available to complainants and respondents (see section III: Definitions "Supportive Measures").
10. The grievance process does not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.

VIII. Notice of Allegations

- A. Upon receipt of a formal complaint, the Title IX Coordinator will provide the following written notice to the parties who are known:
 1. Notice of the university's grievance process, including any informal resolution process
 2. Notice of the allegations potentially constituting sexual harassment (see definitions section of this policy), including sufficient details known at the time and with sufficient time to prepare a response before any initial interview
 3. Sufficient details include:
 - a. The identities of the parties involved in the incident, if known
 - b. The conduct allegedly constituting sexual harassment (as defined in this policy)
 - c. The date and location of the alleged incident, if known
 4. Notice that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process
 5. Notice to the parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney
 6. Notice that the parties and their advisors may inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint
 7. Notice that the university's code of conduct prohibits knowingly making false statements or knowingly submitting false information during the grievance process
- B. If, in the course of an investigation, the university decides to investigate allegations about the complainant or respondent that are not included in the notice as described above, the university must provide notice of the additional allegations to the parties whose identities are known.

IX. Dismissal of a Formal Complaint

- A. The Title IX Coordinator will evaluate the allegations and determine if the conduct alleged in the formal complaint constitutes sexual harassment:
 - 1. As defined by this policy and Title IX and its implementing regulations
 - 2. Occurred in the university's education program or activity AND
 - 3. Occurred against a person in the United States
- B. If any of these conditions are not met, the university is required by Title IX and its implementing regulations to dismiss the formal complaint with regard to that conduct for purposes of sexual harassment under this policy and Title IX. This dismissal does not preclude action under another provision of the university's code of conduct. In many cases the conduct alleged in a complaint dismissed for one of the reasons listed above will be reported to the Dean of Students, Academic Dean, or Director of Human Resources for further evaluation and investigation, if deemed necessary.
- C. Formal complaints or any allegations may also be dismissed if at any time during the investigation or hearing one of the following conditions are met:
 - 1. The complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein
 - 2. The respondent is no longer enrolled or employed by the university OR
 - 3. Specific circumstances prevent the university from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein
- D. Upon the dismissal of formal complaints or any allegations therein, the university must promptly send written notice of the dismissal and reason(s) for the dismissal simultaneously to the parties. This dismissal does not preclude action under another provision of the university's code of conduct. In many cases the conduct alleged in a complaint dismissed for one of the reasons listed above will be reported to the Dean of Students, Academic Dean, or Director of Human Resources for further evaluation and investigation, if deemed necessary.

X. Consolidation of Formal Complaint

- A. The university may consolidate formal complaints as to allegations of sexual harassment against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party, where the allegations of sexual harassment arise out of the same facts or circumstances.

XI. Investigation of a Formal Complaint

- A. For each formal complaint, The Title IX Coordinator assigns an investigator who conducts and investigation using seven required elements of Title IX investigations:
 - 1. The burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rests on the University, not on the parties.
 - a. The university cannot access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized

professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the university obtains that party's voluntary, written consent to do so for a grievance process.

2. The parties will be provided an equal opportunity to present witnesses and other inculpatory (favorable to the complainant) and exculpatory (favorable to the respondent) evidence.
 3. Neither party will be restricted in the ability to discuss the allegations under investigation or to gather and present relevant evidence.
 4. The parties will be provided with the same opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney. The choice or presence of advisors will not be limited for either the complainant or respondent in any meeting or grievance proceeding. However, the extent to which the advisor participates in the proceedings may be restricted by the university, as long as the restrictions apply equally to both parties.
 5. Parties whose participation is invited or expected will be provided written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate.
 6. Both parties will be provided an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, including the evidence upon which the university does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation.
 - a. Prior to completion of the investigative report, the university must send to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy.
 - b. The parties must have at least 10 days to submit a written response to the provided evidence described above.
 - c. The investigator will consider the responses of the parties prior to completion of the investigative report.
 - d. The university will make all such evidence subject to the parties' inspection and review available at any hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination; and
 7. The university will create an investigative report that fairly summarizes relevant evidence and, at least 10 days prior to a hearing (if a hearing is required) or other time of determination regarding responsibility, send to each party and the party's advisor, if any, the investigative report in an electronic format or a hard copy, for their review and written response.
- B. Provided that the complaint is not resolved through Informal Resolution, once the final investigation report is shared with the parties, the Title IX Coordinator will refer the matter for a hearing. The hearing cannot be less than ten (10) business days from the conclusion of the investigation –when the final investigation report is transmitted to the parties and the Decision-maker–unless all parties and the Decision-maker agree to an expedited timeline.

XII. Hearings

- A. At the conclusion of the investigation, the Title IX Coordinator will schedule a hearing before an assigned decision-maker. Title IX and its implementing regulations require IHEs receiving federal funds to include live hearings in their grievance processes and prescribe that the live hearings include the following components:
1. At the live hearing, the decision-maker(s) must permit each party's advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility.
 - a. Such cross-examination at the live hearing must be conducted directly, orally, and in real time by the party's advisor of choice and never by a party personally
 - a. If a party does not have an advisor present at the live hearing, the university will provide, without fee or charge to that party, an advisor of the university's choice, who may be, but is not required to be, an attorney, to conduct cross-examination on behalf of that party.
 2. Either party may request that the live hearing occur with the parties located in separate rooms with technology enabling the decision-maker(s) and parties to simultaneously see and hear the party or the witness answering questions.
 3. Only relevant cross-examination and other questions may be asked of a party or witness.
 - a. Before a complainant, respondent, or witness answers a cross-examination or other question, the decision-maker(s) must first determine whether the question is relevant and explain any decision to exclude a question as not relevant.
 - b. Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.
 4. If a party or witness does not submit to cross-examination at the live hearing, the decision-maker(s) must not rely on any statement of that party or witness in reaching a determination regarding responsibility; provided, however, that the decision-maker(s) cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions.
 5. Live hearings may be conducted with all parties physically present in the same geographic location or, at the university's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually, with technology enabling participants simultaneously to see and hear each other.
 6. Audio or audiovisual recordings, or transcripts, of any live hearings will be created and made available to the parties for inspection and review.

XIII. Determination Regarding Responsibility

- A. The decision maker(s), who cannot be the same person(s) as the Title IX Coordinator or the investigator(s), will issue a written determination regarding responsibility. To reach this determination, the decision maker must apply the appropriate standard of evidence (preponderance of the evidence).
- B. The written determination will include:
 - 1. Identification of the allegations potentially constituting prohibited conduct as defined by this policy and Title IX and its implementing regulations.
 - 2. A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held.
 - 3. Findings of fact supporting the determination.
 - 4. Conclusions regarding the application of the university's code of conduct to the facts.
 - 5. A statement of, and rationale for, the result as to each allegation, including:
 - a. A determination regarding responsibility
 - b. Any disciplinary sanctions to be imposed on the respondent
 - c. Whether remedies designed to restore or preserve equal access to the university's education program or activity will be provided to the complainant
 - d. The procedures and permissible bases for the complainant and respondent to appeal
- C. The written determination will be provided to the parties simultaneously.
- D. The determination regarding responsibility becomes final either on the date that the parties are provided the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.
- E. The Title IX Coordinator is responsible for effective implementation of any remedies.

XIV. Appeals

- A. After the determination of responsibility is issued, both the complainant and respondent will have the opportunity to appeal to a separate decision-maker determinations regarding responsibility and dismissals of formal complaints (or any allegations therein) on the following bases:
 - 1. Procedural irregularity that affected the outcome of the matter
 - 2. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter
 - 3. The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter
- B. Requests for appeals from either the complainant or respondent must be submitted in writing to the Title IX Coordinator within three days of the delivery of the Notice of Outcome.
- C. For determinations being appealed:
 - 1. The non-appealing party will be notified in writing when an appeal is filed
 - 2. Appeal procedures will be implemented equally for both parties
 - 3. The decision-maker(s) for the appeal will not be the same person as the decision-maker(s) that reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator

4. The decision-maker(s) for the appeal will not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent; will receive training on the definition of sexual harassment as defined in this policy and Title IX and its implementing regulations, the scope of the university's education program or activity, how to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias. The decision-maker(s) for the appeal will also receive training on any technology to be used at a live hearing and on issues of relevance of questions and evidence, including when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant as described in this policy. Any materials used to train the decision maker(s) for the appeal must not rely on sex stereotypes and must promote impartial investigations and adjudications of formal complaints of sexual harassment.
 5. Both parties will have a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome
 6. A written decision describing the result of the appeal and the rationale for the result will be issued and provided simultaneously to both parties.
- D. The determination regarding responsibility becomes final either on the date that the parties are provided the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.

XV. Informal Resolution

- A. At any time prior to reaching a determination regarding responsibility the university may facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication.
- B. The university will provide to the parties a written notice disclosing:
 1. The allegations
 2. The requirements of the informal resolution process including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations
 3. That at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint
 4. That statements and records resulting from participating in the informal resolution process, will not be used in subsequent grievance processes for formal complaints.
- C. The university will obtain the parties' voluntary, written consent to the informal resolution process
- D. The university will not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.
- E. The university will not require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, waiver of the right to an investigation and adjudication of formal complaints of sexual harassment consistent with this section.
- F. The university will not require the parties to participate in an informal resolution process under this section and may not offer an informal resolution process unless a formal complaint is filed.

XVI. Retaliation

- A. The university or another person may not intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX or this policy or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this policy.
- B. Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by title IX or this policy, constitutes retaliation.
- C. The university must keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a formal complaint of sexual harassment, any complainant, any individual who has been reported to be the perpetrator of sex discrimination, any respondent, and any witness, except as may be permitted by the FERPA statute, 20 U.S.C. 1232g, or FERPA regulations, 34 CFR part 99, or as required by law, or to carry out the purposes of 34 CFR part 106, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.
- D. Complaints alleging retaliation may be filed according to the grievance procedures for sex discrimination described in this policy.
- E. The exercise of rights protected under the First Amendment does not constitute retaliation prohibited under paragraph (a) of this section.
- F. Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding under this policy does not constitute retaliation, provided, however, that a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.

XVII. Educational Programs

- A. Education and training are important aspects to the existence of a positive environment free of sexual harassment and misconduct. Milligan College's programs regarding the prevention of sexual harassment and misconduct include dissemination of information pertaining to crime prevention via campus email and printed literature, displays and information at college events, programs for students, faculty and staff including residence hall programs and faculty and staff meetings, joint activities with student activities organizations and staff, and other opportunities throughout each school year. New students, faculty and staff are provided with information and/or training regarding sexual harassment and misconduct as part of annual orientation activities.
- B. The college conducts educational programs to promote the awareness of sexual misconduct including sexual assault, dating violence, domestic violence and stalking, which include primary prevention and awareness programs for incoming students and new employees, as well as ongoing prevention and awareness programs for students and faculty which include the college's sexual misconduct policy, the definitions of domestic violence, dating violence, sexual assault, and stalking, the definition of consent in

reference to sexual activity, safe and positive options for bystander intervention, and information on risk reduction to recognize warning signs of abusive behavior.

- C. More information about educational and training materials are included in Appendix B.

Appendix A: Sexual Harassment Policy: Rights And Options

Milligan University is committed to providing students, faculty, staff, visitors and the University community with a positive, healthy environment conducive to the promotion of the University's core values of scholarship, community, and faith. Incidents of any type of sexual harassment, including sexual assault, dating and domestic violence, and stalking are strictly prohibited.

What to Do If You Have Experienced Sexual Trauma or Assault

- **Go to a safe place**
- **Talk to someone you trust:** family member, friend, counselor, Frontier Safe House Hotline (423-306-5169)
- **Preserve all physical evidence:** to assist in proving an alleged offense occurred and/or obtaining an order of protection
- **Seek medical care:** Johnson City Medical Center, 400 N State of Franklin Rd, Johnson City, TN 37604
- **Seek counseling:** Milligan Counseling Center (423-461-8500) or Campus Minister (423-461-8760)
 - These resources **are not** required to report incidents disclosed to them to campus authorities
 - **All other University employees** (faculty and staff) **are** required to report incidents disclosed to them to campus authorities
- **Consider Reporting Options**
 - **Report to Police:** Elizabethton Police Department (911 or 423-542-4141)
 - **Report to Campus Authorities:** Campus Security (423-461-8911), Title IX Coordinator (423-461-8740), Dean of Students (423-461-8760), or Residence Life Staff
 - Victims have the right to choose when and to whom incidents are reported or to decline to report incidents
 - Campus Authorities will assist victims who choose to report to law enforcement and wish to be assisted

Available Resources

- Supportive Measures: Changes in academic, living, transportation, or working situations and/or the implementation of protective measures such as no contact orders facilitated by Title IX Coordinator (423-461-8740) or designee
- Orders of Protection: Law enforcement authorities or University officials will assist the victim in contacting the authorities to pursue orders of protection, at the victim's request. For information about pursuing orders of protection without assistance from law enforcement or campus authorities, contact the Carter County Clerk's Office at 423-542-1825 during business hours or the Carter County Sheriff's Office-Judicial Commissioner at 423-542-1850 after business hours.

Victim Services: Counseling, health, legal assistance, visa, and immigration assistance, financial aid

Milligan Counseling Center	423-461-8500
Milligan Campus Minister	423-461-8760
Frontier Health Safe House 24-Hour Hotline	423-306-5169
Safe Passage Domestic Violence Shelter 24-Hour Hotline	423-926-7233

Contact Ministries (Resource Center)	423-926-0144 or 211
National Sexual Assault Hotline	800-656-HOPE
National Domestic Violence Hotline	800-799-7233
National Center for Victims of Crime– Stalking Resource Center	800-FYI-CALL
Milligan Financial Aid Office	423-461-8968
Legal Aid of East Tennessee	423-928-8311

Grievance Process for Cases of Sexual Harassment Allegations

- **Initial assessment:** The Title IX Coordinator will meet with the complainant to discuss available supportive measures and options for further action including receiving supportive measures only, filing a formal complaint, and the availability of informal resolution (upon the filing of a formal complaint) when appropriate and agreed to by both parties.
- **Informal Resolution:** Informal resolution cannot be required by the University and must be determined appropriate by the Title IX Coordinator based on the content of the report. When determined to be appropriate and agreed to voluntarily by both parties, written notification will be provided disclosing the allegations, the requirements of the informal resolution process including requirements precluding the pursuit of a formal complaint arising from the same allegations, and notice that any party may choose to end the informal resolution process and resume the formal grievance process.
- **Formal complaint:** The complainant files a formal complaint in writing. The Title IX Coordinator then initiates Title IX Grievance Process, unless an appropriate, agreed upon informal resolution is to be pursued or the Title IX Coordinator determines the allegations do not fall under Title IX and its implementing regulations, in which case the allegations will be referred to the appropriate University conduct policy.
- **Requirements of Grievance Process:** The grievance process is conducted according to 10 core Title IX requirements: equitable treatment, objective evaluation, training and impartiality of key participants, presumption of non-responsibility, prompt timeframes, identified sanctions and remedies, defined standard of evidence, established procedures for appeal, identified supportive measures, and respect of legal privilege.
- **Notice of Allegations:** Upon receipt of a formal complaint, the Title IX Coordinator provides written notice of the Title IX Grievance Process including informal resolution, detailed allegations of sexual harassment in the complaint, presumption of non-responsibility of the respondent, ability of complainant and respondent to have an advisor of their choice, and prohibition of knowingly submitting false information.
- **Investigation of a Formal Complaint:** The Title IX Coordinator assigns an investigator who conducts and investigation using seven required elements of Title IX investigations: burden of proof resting on the University, equal opportunities for parties to present witnesses and evidence, parties not restricted to discuss allegations under investigation or gather evidence, provide same opportunities to have advisor participate in any proceedings, provide written notice of any hearings, interviews or meetings, provide opportunities to inspect and review any directly related evidence, opportunity to review and respond to investigative report.
- **Hearing:** At the conclusion of the investigation, the Title IX Coordinator will schedule a hearing before an assigned decision-maker. Hearings must be live (in person or virtual) and allow for the cross examination of complainant, respondent and witnesses by each party’s advisor of choice or an advisor assigned by the University for the purpose of cross examination if either party does not have an advisor of choice with questions ruled to be relevant by the decision-maker.

- **Determination of Responsibility:** At the conclusion of the hearing, the decision-maker will issue a written determination of responsibility, provided to the parties simultaneously, including identification of the allegations, a description of procedural steps taken throughout the grievance process, findings of fact supporting the determination, conclusions regarding the application of University policy to the facts of the case, statements of and rationale for the result as to each allegation, the determination of responsibility, any disciplinary sanctions to be imposed, any remedies provided to restore or preserve equal access to the University's educational program or activity, and the procedures for and permissible bases of appeal.
- **Opportunity to Appeal:** After the determination of responsibility is issued, both the complainant and respondent will have the opportunity to appeal to a separate decision-maker on the following bases: procedural irregularity that affected the outcome, new evidence that was not reasonably available at the time of the determination of responsibility, and bias or conflict of interest on the part of the Title IX Coordinator, investigator, or decision-maker. Both parties will be simultaneously notified in writing when an appeal is filed and have the opportunity to submit a written statement in support of or challenging the outcome, and both parties will be simultaneously notified of the result of and rationale for result.

Prohibition of Retaliation: The University or any other person may not intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX or University policy or because an individual made a report or complaint or participated in a grievance process.

Confidentiality: The University will keep confidential the identity of any individual who makes a report or complaint of any form of prohibited sex discrimination, including reporters, complainants, respondents, and witnesses, except as may be permitted by FERPA, as required by law, or to carry out the purposes of Title IX and University policy including investigations, hearings or other proceedings.

Sexual Harassment Offenses

As defined by Title IX and the University Title IX Sexual Harassment Policy, sexual harassment offenses include unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the University's education program or activity (hostile environment sexual harassment), an employee of the University conditioning the provision of an aid, benefit, or service on an individual's participation in unwelcome sexual conduct (quid pro quo sexual harassment), sexual assault, domestic violence, dating violence, or stalking.

Consent is the agreement to engage in sexual activity, which is **voluntary** (consent is not possible when coercion, force, or threat is present), **aware** (consent is impossible when incapacitation occurs for any reason), **clear** (silence or absence of resistance does not imply consent), **immediate** (past consent does not imply future consent), **continuous** (consent can be withdrawn at any time), and **specific** (consent with one person does not imply consent with others).

Understanding consent is an essential part of engaging in healthy relationships and the prevention and awareness of sexual harassment, sexual assault, domestic violence, dating violence, and stalking.

To Learn More

For more information on University safety and security policies and procedures and crime reporting, including the full sexual misconduct policy, please see the links below or the Title IX Coordinator. The Title IX Coordinator for Milligan

University is: Brent Nipper, (423) 461-8740, wbnipper@milligan.edu. The Title IX Coordinator's office is located upstairs in the Little Hartland Welcome Center

Milligan University Safety and Security: <https://www.milligan.edu/student-life/#safety-security>

Milligan University Title IX Sexual Harassment Policy: <https://www.milligan.edu/wp-content/uploads/2018/09/sexual-misconduct-policy.pdf>

Definitions of sexual assault, domestic violence, dating violence and stalking in Title IX, Clery Act/VAWA, and Tennessee state law: <https://www.milligan.edu/wp-content/uploads/2014/07/tca-definitions.pdf>

Milligan University Title IX and Nondiscrimination Information: : <https://www.milligan.edu/student-life/#safety-security>

Appendix B: Educational and Training Programs

Education and training are important aspects to the existence of a positive environment free of sexual harassment and misconduct. Educational programs conducted by the university include primary prevention programs and awareness programs.

Primary prevention programs are defined as programming, initiatives, and strategies intended to stop dating violence, domestic violence, sexual assault and stalking before they occur through the promotion of positive and healthy behaviors that foster healthy, mutually respectful relationships and sexuality, encourage safe bystander intervention, and seek to change behavior and social norms in healthy and safe directions.

Awareness programs are defined as community-wide or audience specific programming, initiatives and strategies that increase audience knowledge, and share information and resources to prevent violence, promote safety, and reduce perpetration.

The University's programs regarding the prevention of dating violence, domestic violence, sexual assault and stalking include primary prevention and awareness programs directed at all new students and employees. Primary prevention and awareness programs for new students and employees are conducted as part of orientation activities.

In addition to primary prevention and awareness education for new students and employees, the University conducts ongoing prevention and awareness programs for students and employees. These programs include the same information as primary prevention and awareness programs detailed above. Ongoing prevention and awareness programs include the dissemination of information pertaining to crime prevention via campus email and printed literature, displays and information at university events, programs for students, faculty and staff including residence hall programs and faculty and staff meetings, joint activities with student activities organizations and staff, and other opportunities throughout each school year.

Primary prevention and awareness programs include:

- A statement that Milligan University prohibits the crimes of dating violence, domestic violence, sexual assault and stalking.
- Definitions of dating violence, domestic violence, sexual assault and stalking in the Clery Act and in Tennessee state law.
- The university's institutional definition of consent in reference to sexual activity. This definition is provided because there is no specific definition of consent in reference to sexual activity in Tennessee state law.
- A description of safe and positive options for bystander intervention
- Information about risk reduction

More information about each of these four components is listed below.

Prohibition of Criminal Activity

Milligan University prohibits the crimes of dating violence, domestic violence, sexual assault and stalking, as defined by the Clery Act and the State of Tennessee.

Federal Clery Act Definitions of Domestic Violence, Dating Violence, Sexual Assault and Stalking

For statistical reporting purposes, the Clery Act defines the crimes of domestic violence, dating violence, sexual assault and stalking as follows:

Domestic Violence:

- i. A Felony or misdemeanor crime of violence committed—
 - A) By a current or former spouse or intimate partner of the victim;
 - B) By a person with whom the victim shares a child in common;
 - C) By a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner;
 - D) By a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred; or
 - E) By any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.
- ii. For the purposes of complying with the requirements of this section and §668.41, any incident meeting this definition is considered a crime for the purposes of Clery Act reporting.

Dating Violence: Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim.

- i. The existence of such a relationship shall be based on the reporting party's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.
- ii. For the purposes of this definition—
 - A) Dating Violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
 - B) Dating violence does not include acts covered under the definition of domestic violence.
- iii. For the purposes of complying with the requirements of this section and §668.41, any incident meeting this definition is considered a crime for the purposes of Clery Act reporting.

Sexual Assault An offense that meets the definition of rape, fondling, incest, or statutory rape as used in the FBI's Uniform Crime Reporting (UCR) program. Per the National Incident-Based Reporting System User Manual from the FBI UCR Program, a sex offense is "any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent."

- **Rape** is defined as the penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.
- **Fondling** is defined as the touching of the private parts of another person for the purposes of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity.
- **Incest** is defined as sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- **Statutory Rape** is defined as sexual intercourse with a person who is under the statutory age of consent.

Stalking:

- i. Engaging in a course of conduct directed at a specific person that would cause a reasonable person to—
 - A) Fear for the person’s safety or the safety of others; or
 - B) Suffer substantial emotional distress.
- ii. For the purposes of this definition—
 - A) *Course of conduct* means two or more acts, including, but not limited to, acts which the stalker directly, indirectly, or through third parties, by any action, method, device, or means follows, monitors, observes, surveils, threatens, or communicates to or about, a person, or interferes with a person’s property.
 - B) *Reasonable person* means a reasonable person under similar circumstances and with similar identities to the victim.
 - C) *Substantial emotional distress* means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.
 - a. For the purposes of complying with the requirements of this section and section 668.41, any incident meeting this definition is considered a crime for the purposes of Clery Act reporting.

Tennessee Definitions of Domestic Violence, Dating Violence, Sexual Assault and Stalking

Domestic Violence: The state of Tennessee defines domestic violence as follows.

TCA 39-13-111 defines Domestic Assault.

A person commits domestic assault who commits an assault as defined in § 39-13-101 against a domestic abuse victim.

TCA 39-13-101 states:

(a) A person commits assault who:

(1) Intentionally, knowingly or recklessly causes bodily injury to another;

(2) Intentionally or knowingly causes another to reasonably fear imminent bodily injury; or

(3) Intentionally or knowingly causes physical contact with another and a reasonable person would regard the contact as extremely offensive or provocative.

TCA 39-13-111 states:

(a) A person commits assault who:

(1) Intentionally, knowingly or recklessly causes bodily injury to another;

(2) Intentionally or knowingly causes another to reasonably fear imminent bodily injury; or

(3) Intentionally or knowingly causes physical contact with another and a reasonable person would regard the contact as extremely offensive or provocative.

TCA 39-13-111 states:

Domestic abuse victims are:

(1) Adults or minors who are current or former spouses;

(2) Adults or minors who live together or who have lived together;

(3) Adults or minors who are dating or who have dated or who have or had a sexual relationship, but does not include fraternization between two (2) individuals in a business or social context;

(4) Adults or minors related by blood or adoption;

(5) Adults or minors who are related or were formerly related by marriage; or

(6) Adult or minor children of a person in a relationship that is described in subdivisions

Therefore a person commits domestic assault who intentionally, knowingly or recklessly causes bodily injury to another; intentionally or knowingly causes another to reasonably fear imminent bodily injury; or intentionally or knowingly causes physical contact with another and a reasonable person would regard the contact as extremely offensive or provocative AND when victim of such crime is/are adults or minors who are current or former spouses; adults or minors who live together or who have lived together; adults or minors who are dating or who have dated or who have or had a sexual relationship, but does not include fraternization between two (2) individuals in a business or social context; adults or minors related by blood or adoption; adults or minors who are related or were formerly related by marriage; or adult or minor children of a person in a relationship that is described in the previous categories.

Dating Violence: The state of Tennessee does not specifically define dating violence. Dating violence falls under the definition of domestic assault where it specifies:

TCA 36-3-601(5)(c) includes among victims of domestic abuse

(C) Adults or minors who are dating or who have dated or who have or had a sexual relationship. As used herein, "dating" and "dated" do not include fraternization between two (2) individuals in a business or social context;

Thus an act of dating violence is considered an act of domestic assault and subject to TCA 39-13-111 listed above.

Sexual Assault: The state of Tennessee defines Clery sexual assault offenses (rape, fondling, incest and statutory rape as follows:

TCA 39-11-501 through 39-11-505 and 39-15-302 provide definitions for categories of sexual assault.

39-13-502. Aggravated rape.

(a) Aggravated rape is unlawful sexual penetration of a victim by the defendant or the defendant by a victim accompanied by any of the following circumstances:

(1) Force or coercion is used to accomplish the act and the defendant is armed with a weapon or any article used or fashioned in a manner to lead the victim reasonably to believe it to be a weapon;

(2) The defendant causes bodily injury to the victim;

(3) The defendant is aided or abetted by one (1) or more other persons; and

(A) Force or coercion is used to accomplish the act; or

(B) The defendant knows or has reason to know that the victim is mentally defective, mentally incapacitated or physically helpless.

39-13-503. Rape.

(a) Rape is unlawful sexual penetration of a victim by the defendant or of the defendant by a victim accompanied by any of the following circumstances:

(1) Force or coercion is used to accomplish the act;

(2) The sexual penetration is accomplished without the consent of the victim and the defendant knows or has reason to know at the time of the penetration that the victim did not consent;

(3) The defendant knows or has reason to know that the victim is mentally defective, mentally incapacitated or

physically helpless; or

(4) The sexual penetration is accomplished by fraud.

39-13-504. Aggravated sexual battery.

(a) Aggravated sexual battery is unlawful sexual contact with a victim by the defendant or the defendant by a victim accompanied by any of the following circumstances:

(1) Force or coercion is used to accomplish the act and the defendant is armed with a weapon or any article used or fashioned in a manner to lead the victim reasonably to believe it to be a weapon;

(2) The defendant causes bodily injury to the victim;

(3) The defendant is aided or abetted by one (1) or more other persons; and

(A) Force or coercion is used to accomplish the act; or

(B) The defendant knows or has reason to know that the victim is mentally defective, mentally incapacitated or physically helpless; or

(4) The victim is less than thirteen (13) years of age.

39-13-505. Sexual battery.

(a) Sexual battery is unlawful sexual contact with a victim by the defendant or the defendant by a victim accompanied by any of the following circumstances:

(1) Force or coercion is used to accomplish the act;

(2) The sexual contact is accomplished without the consent of the victim and the defendant knows or has reason to know at the time of the contact that the victim did not consent;

(3) The defendant knows or has reason to know that the victim is mentally defective, mentally incapacitated or physically helpless; or

(4) The sexual contact is accomplished by fraud.

(b) As used in this section, "coercion" means the threat of kidnapping, extortion, force or violence to be performed immediately or in the future.

39-13-506. Mitigated statutory rape -- Statutory rape -- Aggravated statutory rape.

(a) Mitigated statutory rape is the unlawful sexual penetration of a victim by the defendant, or of the defendant by the victim when the victim is at least fifteen (15) but less than eighteen (18) years of age and the defendant is at least four (4) but not more than five (5) years older than the victim.

(b) Statutory rape is the unlawful sexual penetration of a victim by the defendant or of the defendant by the victim when:

(1) The victim is at least thirteen (13) but less than fifteen (15) years of age and the defendant is at least four (4) years but less than ten (10) years older than the victim; or

(2) The victim is at least fifteen (15) but less than eighteen (18) years of age and the defendant is more than five (5) but less than ten (10) years older than the victim.

(c) Aggravated statutory rape is the unlawful sexual penetration of a victim by the defendant, or of the defendant by the victim when the victim is at least thirteen (13) but less than eighteen (18) years of age and the defendant is at least ten (10) years older than the victim.

39-15-302. Incest.

(a) A person commits incest who engages in sexual penetration as defined in § 39-13-501, with a person, knowing the person to be, without regard to legitimacy:

(1) The person's natural parent, child, grandparent, grandchild, uncle, aunt, nephew, niece, stepparent, stepchild, adoptive parent, adoptive child; or

(2) The person's brother or sister of the whole or half-blood or by adoption.

(b) Incest is a Class C felony.

Stalking: The state of Tennessee defines stalking as follows:

TCA 39-17-315 defines Stalking.

(4) Stalking means a willful course of conduct involving repeated or continuing harassment of another individual that would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed, or molested, and that actually causes the victim to feel terrorized, frightened, intimidated, threatened, harassed, or molested;

There are additional degrees of stalking, as defined below.

(c) (1) A person commits **aggravated stalking** who commits the offense of stalking as prohibited by subsection (b), and:

(A) In the course and furtherance of stalking, displays a deadly weapon;

(B) The victim of the offense was less than eighteen (18) years of age at any time during the person's course of conduct, and the person is five (5) or more years older than the victim;

(C) Has previously been convicted of stalking within seven (7) years of the instant offense;

(D) Makes a credible threat to the victim, the victim's child, sibling, spouse, parent or dependents with the intent to place any such person in reasonable fear of death or bodily injury; or

(E) At the time of the offense, was prohibited from making contact with the victim under a restraining order or injunction for protection, an order of protection, or any other court-imposed prohibition of conduct toward the victim or the victim's property, and the person knowingly violates the injunction, order or court-imposed prohibition.

(d) (1) A person commits **especially aggravated stalking** who:

(A) Commits the offense of stalking or aggravated stalking, and has previously been convicted of stalking or aggravated stalking involving the same victim of the instant offense; or

(B) Commits the offense of aggravated stalking, and intentionally or recklessly causes serious bodily injury to the victim of the offense or to the victim's child, sibling, spouse, parent or dependent.

Consent: The state of Tennessee does not have a definition of consent, in relation to sexual activity. The definition of consent as defined by Milligan University is listed below.

1. Consent: Agreement to engage in sexual activity, which is voluntary (consent is not possible when coercion, force, or threat is present), aware (consent is impossible when incapacitation occurs for any reason), clear (silence or absence of resistance does not imply consent), immediate (past consent does not imply future consent), continuous (consent can be withdrawn at any time), and specific (consent with one person does not imply consent with others).

Safe and Positive Options for Bystander Intervention

The term **bystander intervention** refers to safe and positive options that may be carried out by an individual or individuals to prevent harm or intervene in situations of potential harm when there is a risk of criminal offenses such as domestic violence, dating violence, sexual assault, or stalking. Bystander intervention includes recognizing situations of potential harm, understanding institutional structures and cultural conditions that facilitate violence, overcoming barriers to intervening, identifying safe and effective intervention options, and taking action to intervene.

Bystanders witness inappropriate behaviors such as harassment or disrespectful language being committed in the world around them. By choosing to act by speaking up or reporting these observations, active bystanders can have a significant impact on sexual misconduct prevention. The most effective result of bystander intervention is to diffuse potentially harmful situations before they escalate into sexually abusive incidents.

The first priority for any act of bystander intervention is to ensure as much as possible the safety of all parties involved. When witnessing troubling behavior and deciding when and how to act, bystanders should contact the authorities when they fear for their own safety or the safety of others. Intervention is more effective and safer when intervention is conducted by a group rather than by an individual. When choosing to intervene, it is important to be firm and honest about the situation, but also to be respectful and to avoid aggressive or violent behavior while intervening.

Another component of bystander intervention is providing care to victims of inappropriate behavior and/or sexual assault. Bystanders provide care and assistance for victims by asking if the victim is OK, helping them to secure medical help at the victim's discretion, contacting authorities if the victim chooses to do so, and ensuring the victim gets to a safe place after any incidents.

The first steps to becoming an active bystander are to educate yourself about sexual harassment, misconduct and assault; and to speak up or report abusive behavior or inappropriate language in situations you feel may lead to future cases of sexual misconduct. Some basic guidelines and information regarding bystander intervention are listed below.

Six Steps to Bystander Action (© 2004 Active Bystander Program and Mediation@MIT.)

1. *Notice an occurrence out of the ordinary*
2. *Decide "in your gut" that something is amiss or unacceptable*
3. *Ask yourself, "Could I play a role here?"*
 - *If no one intervenes, what will likely happen?*
 - *Is someone else better placed to respond?*
 - *What would be my purpose in responding?*
4. *Assess your options for giving help*
5. *Determine the potential risks of taking action.*
 - *Are there risks to myself?*
 - *Are there risks to others (e.g. potential retaliation against person being "helped")?*

- *Is there a low-risk option?*
- *How could I reduce risks?*
- *Is there more information I can get to better assess the situation?*

6. *Decide whether to act, at the time or later*

(adapted and expanded from Darley & Latane's Bystander Intervention Model)

Why Bystanders Don't Act (© 2004 Active Bystander Program and Mediation@MIT.)

According to Mary Rowe of the MIT Ombuds Office, bystanders often hesitate to act because...

1. *They fear loss of relationships, with the problem person or with others who may disapprove of action.*
2. *They fear retaliation, especially if the problem person is powerful.*
3. *They fear embarrassment, especially if they may not be believed or they may be viewed as troublemakers, or as violating other community norms.*
4. *They feel a lack of competence, or uncertainty about what action would be best.*
5. *They believe someone else will take action (perhaps someone else with more authority or expertise) .*

Risk Reduction

With no intent to victim blame and recognizing that only abusers are responsible for their abuse, the following are some strategies to reduce one's risk of sexual assault or harassment (taken from Rape, Abuse, & Incest National Network, www.rainn.org)

1. **Be aware** of your surroundings. Knowing where you are and who is around you may help you to find a way to get out of a bad situation.
2. Try to **avoid isolated areas**. It is more difficult to get help if no one is around.
3. **Walk with purpose**. Even if you don't know where you are going, act like you do.
4. **Trust your instincts**. If a situation or location feels unsafe or uncomfortable, it probably isn't the best place to be.
5. **Try not to load yourself down** with packages or bags as this can make you appear more vulnerable.
6. **Make sure your cell phone is with you** and charged.
7. **Don't allow yourself to be isolated** with someone you don't trust or someone you don't know.
8. **Avoid putting music headphones in both ears** so that you can be more aware of your surroundings, especially if you are walking alone.
9. **When you go to a social gathering, go with a group of friends**. Arrive together, check in with each other throughout the evening, and leave together. Knowing where you are and who is around you may help you to find a way out of a bad situation.
10. **Trust your instincts**. If you feel unsafe in any situation, go with your gut. If you see something suspicious, contact law enforcement immediately.

(Items listed below discuss risk reduction strategies regarding alcohol. While Milligan's alcohol policy prohibits traditional underage students from alcohol use or possession, the relationship between alcohol use and sexual assault is pervasive enough that some references to alcohol use are necessary to fully discuss risk reduction.)

11. **Don't leave your drink unattended.**
12. **Don't accept drinks from people you don't know or trust.**
13. **Watch out for your friends, and vice versa.**
14. **If you suspect you or a friend has been drugged, contact law enforcement immediately.**
15. If you need to get out of an uncomfortable or scary situation here are some things that you can try:
 - a. **Remember that being in this situation is not your fault.** You did not do anything wrong, it is the person who is making you uncomfortable that is to blame.

- b. **Be true to yourself.** Don't feel obligated to do anything you don't want to do. "I don't want to" is always a good enough reason. Do what feels right to you and what you are comfortable with.
 - c. **Have a code word with your friends or family** so that if you don't feel comfortable you can call them and communicate your discomfort without the person you are with knowing. Your friends or family can then come to get you or make up an excuse for you to leave.
16. **Try to think of an escape route.** How would you try to get out of the room? Where are the doors? Windows? Are there people around who might be able to help you? Is there an emergency phone nearby?