



**TENNESSEE BOARD OF REGENTS**  
**Special Called Board Meeting**  
**Wednesday, August 12, 2020 – 2:30 p.m. (CDT)**  
**Agenda**

1. Review and Consider Proposed Policy Revisions Required by Revised Title IX Regulations (*Lapps*)
  - A. TBR Policy 6:03:00:00 – Sexual Misconduct
  - B. TBR Policy 5:01:02:00 – Equal Employment Opportunity and Affirmative Action
  - C. TBR Policy 6:01:00:00 – Sex Discrimination, Sexual Harassment or Misconduct
  - D. TBR Policy 6:02:00:00 – Sex Discrimination and Sexual Harassment
  - E. TBR Policy 2:08:10:00 – Development and Operation of Off-campus International Educational Programs
  
2. Review and Consider New Policy: TBR Policy 7.03.00.00 - Infectious Diseases (*Leming*)

BOARD TRANSMITTAL

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MEETING: August 12, 2020 Special Called Board Meeting

SUBJECT: Policy Revisions Required by Revised Title IX Revisions

DATE: July 28, 2020

PRESENTER: Brian A. Lapps, Jr.

PRESENTATION REQUIREMENTS: 30 minutes

ACTION REQUIRED: Roll Call Vote

STAFF'S RECOMMENDATION: Approval

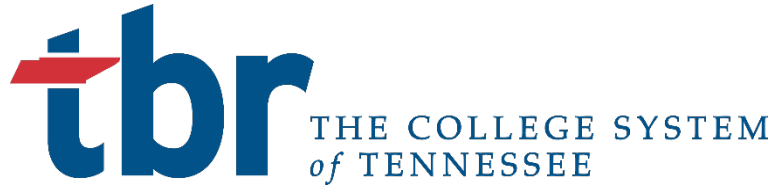
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BACKGROUND INFORMATION:

The U.S. Department of Education announced revised Title IX regulations on May 6, 2020, which include 33 pages of regulations and 2000 pages of explanatory preamble. The regulations are scheduled to become effective August 14, 2020. Lawsuits are seeking to delay or prevent implementation.

In accordance with TBR Board Policy 1.11.00.00, Development of Policies and Procedures, the Presidents Council will review the proposed policy revisions on August 5, 2020. Due to the extensive nature of the proposed revisions, the materials are being provided simultaneously to Board Members and are attached hereto. Because most of the proposed policy changes are mandated by the regulations, the Office of General Counsel believes there will be limited need for the Presidents' Council to make revisions, but any updated materials will be shared with the Board in a timely manner. The Board is being asked to review and approve the proposed policy revisions.

Attachment(s): Presidents Meeting Transmittal, including attachments



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PRESIDENTS MEETING TRANSMITTAL

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MEETING: August 2020 Quarterly Presidents Meeting

SUBJECT: Policy Revisions Required by Revised Title IX Regulations

DATE: July 28, 2020

PRESENTER: Brian A. Lapps, Jr.,  
General Counsel

ACTION REQUIRED: Voice Vote

STAFF RECOMMENDATION: Move Policies on to Board; Approve revision to P-080

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**I. BACKGROUND**

The U.S. Department of Education announced revised Title IX regulations on May 6, 2020, which include 33 pages of regulations and 2000 pages of explanatory preamble. The regulations are scheduled to become effective August 14, 2020. Lawsuits are seeking to delay or prevent implementation.

**II. SUMMARY**

The regulations make significant changes to required Title IX processes, including (1) requiring separation of roles during investigation and adjudication; (2) defining “sexual harassment” more narrowly; (3) introducing detailed procedural requirements for filing complaints and conducting investigations; and (4) requiring live hearings with cross-examination to decide facts and responsibility. Each of these topics is discussed in more detail below. The overall goals of the revision are to maintain safety while treating all parties fairly, to comply with the regulations, and to maintain the current policy structure and processes as much as possible because processing all complaints according to the new regulations would be too disruptive.

### **III. PRACTICAL EFFECT OF REGULATIONS**

Based on information available for the last two full years, no more than 10 matters across the system, all at community colleges, would have been directed to the new process. Five policies and one guideline will need to be revised. The regulations also require specific training for those involved in the process.

### **IV. POLICY REVISIONS**

#### *A. TBR Policy 6.03.00.00 - Sexual Misconduct*

The overall structure of the Sexual Misconduct Policy remains the same—only the subset of sexual harassment allegations that meets the definition of “sexual misconduct” will be handled pursuant to the Sexual Misconduct Policy. Other sexual harassment allegations will continue to be handled pursuant to TBR Guideline P-080 and institutional anti-harassment policies. Revisions to the Sexual Misconduct Policy are so extensive that a version showing changes would be counterproductive. Rather, a version with comments identifying the most significant issues is provided, along with a clean copy. (For other policies, the changes are emphasized per policy.) The most significant revisions as required by the regulations are also discussed below.

1. Separation of functions and increased number of people needed
  - a. Practical effect – more people will need to be involved in the process, which will be challenging especially for TCATS. Local teams in each area of the state will assist each other, consistent with the Methods of Administration procedures.
  - b. Title IX Coordinator – completes intake, provides supportive measures, directs and monitors all aspects of process.
  - c. Investigator - investigates facts and prepares report.
  - d. Decision-Maker - presides over live hearing and decides case.
  - e. Appellate Reviewer - decides any appeal.
2. Definition of Sexual Misconduct and Formal Complaint (Definitions Section)
  - a. Practical effect – many allegations of sexual harassment will not fall within the scope of allegations covered by the regulations and will be handled in accordance with existing policy. The institution may dismiss matters when a party ceases to be enrolled or employed.
  - b. The revisions expand the definition of sexual misconduct as required.
  - c. Applicability of policy is limited to acts within education programs and activities, meaning that many off campus allegations will not meet the definition.
3. Formal Complaint process (Section II.C)

- a. Practical effect – limits who may file a formal complaint.
    - b. Complaints must be in writing.
  - 4. Investigations (Section IV)
    - a. Practical effect – prescribes due process and reduces role of the investigator.
    - b. A detailed notice of allegations will be provided.
    - c. Policy describes instances when formal complaints may and must be dismissed.
    - d. Reports must summarize the evidence, not make findings of fact or policy violations.
    - e. Parties have the ability to review draft reports.
  - 5. Live Hearings (Sections IV.H; IV.N.11-12)
    - a. Practical Effect – this is a major departure from current process; may be challenging for decision-makers.
    - b. Decision-maker holds a live hearing to decide facts and whether policy was violated.
    - c. Hearings are adversarial but very different from trials.
    - d. Uses the preponderance of evidence standard.
  - 6. Advisors (Sections IV.H)
    - a. Practical effect – consistent with current policy, advisors are permitted to attend meetings but cannot actively participate in most aspects of the process, except that advisors must conduct cross-examination. Regional teams will share resources.
    - b. Institutions must provide an advisor if a party does not bring one. The institution need not provide a lawyer.
- B. TBR Policy 5.01.02.00 - Equal Employment Opportunity and Affirmative Action*
- 1. Practical effect – not much. Changes are designed primarily to comply with regulations relating to the appointment and role of a Title IX Coordinator.
  - 2. Changes reflect that the Title IX Coordinator is not permitted to serve as the investigator of a formal complaint and that TBR Guideline P-080 will not be followed when the Sexual Misconduct Policy applies.
  - 3. Changes also clarify that the Title IX Coordinator may not be the EEO/Affirmative Action Officer.
- C. TBR Policy 6.01.00.00 - Sex Discrimination, Sexual Harassment or Sexual Misconduct*
- 1. Practical effect – almost none.
  - 2. Changes reflect that the definitions in the Sexual Misconduct Policy need to change and that some sexual harassment may rise to the level of sexual misconduct.
- D. TBR Policy 6.02.00.00 - Sex Discrimination and Sexual Harassment*

1. Practical effect – reflects increased recordkeeping obligations, and not only for sexual misconduct investigations.
2. The changes reflect the requirements of the new regulations, but institutions are currently directing sex discrimination complaints to their Title IX Coordinators
3. The revisions reflect the requirement to retain certain materials for seven years.
4. Training materials must be posted on the website.

E. *TBR Policy 2.08.10.00 – Development & Operation of Off-Campus International Education Programs.*

1. Practical effect – none.
2. The regulations do not permit a formal complaint for sexual misconduct that takes place outside the U.S. Any such complaints will be handled according to existing policies and practices.

**V. PROCEDURE/GUIDELINE REVISIONS**

A. *TBR Guideline P-080 – Discrimination & Harassment – Complaint & Investigation Procedure*

1. Practical effect – revisions are to ensure consistency with Sexual Misconduct Policy.

## Sexual Misconduct: 6.03.00.00

### Policy Area

Sexual Discrimination/Harassment/Misconduct

### Applicable Divisions

TCATs, Community Colleges, System Office

### Purpose

It is the intent of the Tennessee Board of Regents that the institutions under its jurisdiction shall fully comply with Title IX of the Education Amendments of 1972, §485(f) of the HEA, as amended by § 304 of the Violence Against Women Reauthorization Act of 2013, the regulations implementing these Acts found at 34 CFR §668.41, §668.46, and Appendix A to Subpart D of Part 668. This policy addresses the offenses defined herein as “Sexual Misconduct.” Sexual Misconduct is a subset of a broader category of sexual harassment. Allegations of sexual harassment that do not meet the definition of Sexual Misconduct will be handled in accordance with TBR Guideline P-080 and applicable institutional policy. The Tennessee Board of Regents intends for each institution to provide a single, easily accessible and user-friendly document to advise students, employees, and others affected by Sexual Misconduct of each institution's rules and procedures. Institutions under the Tennessee Board of Regents system shall ensure that the Sexual Misconduct policy is in a format or formats that make it readily available. The following policy and procedures are adopted by the Board to assist the institutions in such compliance.

### Definitions

For the purpose of this policy, the following definitions shall apply:

- Complainant – a person who is alleged to be the victim of conduct that could constitute Sexual Misconduct. A Complainant may also be referred to as a Party.
- Consent - an active agreement to participate in a sexual act. An active agreement is words and/or actions that indicate a willingness to participate in a sexual act. Consent cannot be given by an individual who is asleep; unconscious; or mentally or physically incapacitated, either through the effect of drugs or alcohol or for any other reason; or, is under duress, threat, coercion, or force. Past Consent does not imply future consent. Silence or an absence of resistance does not imply consent. Consent can be withdrawn at any time. See Clarifications for more information.
- Dating violence – violence committed by a person-

**Commented [BL1]:** The limited applicability of this revision is consistent with the approach in the current version.

**Commented [BL2]:** This suggested revision is designed to make the standard more objective and simpler.

The current definition is “an informed decision, freely given, made through mutually understandable words or actions that indicate a willingness to participate in mutually agreed upon sexual activity.”

**Commented [BL3]:** Definitions of Dating Violence, Domestic Violence, Sexual Assault, Title IX Sexual Assault, and Stalking are statutory.

- 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; and
  - The frequency of interaction between the persons involved in the relationship.
- Domestic violence – includes 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 in which the crime occurs, 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 in which the crime occurs. In cases involving allegations of mutual acts or threats of acts of violence, the investigator will, when appropriate, identify the primary aggressor in the situation based on the totality of the information gathered, including without limitation: the history of violence between the Parties; the relative severity of the injuries inflicted on each person; information gathered from the persons involved in the situation and witnesses to the situation; and whether the acts or threats were done in self-defense. The primary aggressor will be considered the Respondent for purposes of evaluating Domestic Violence.
- Education program or activity - education programs and activities include locations, events, or circumstances over which the TBR or a TBR institution exercises substantial control over both the Respondent and the context in which the alleged Sexual Misconduct occurred. Relevant factors include whether the alleged conduct took place (i) on or off premises owned or controlled by TBR, (ii) during school or work hours, (iii) as part of an institution-sponsored social activity, and (iv) as part of an activity that advances an educational purpose. Education programs or activities also include any building owned or controlled by a student organization that is officially recognized by a TBR institution. Whether Respondent is an institutional employee, and if so, the nature of the Respondent's employment may be relevant. No single factor is determinative, including whether or not the alleged harassment took place on premises owned or controlled by a TBR institution. The Title IX Coordinator, after consulting with the Office of General Counsel, will make a fact-specific Determination whether, if proven,

**Commented [BL4]:** The geographic scope to which the regulations/revised policy apply is more limited than the current version. Sexual harassment outside of this limited setting may be addressed, as appropriate, through the general anti-harassment policy and Guideline P-080.



the allegations arise out of an education program or activity. Where some alleged Sexual Misconduct took place within a TBR education program or activity and some took place outside of it, the Title IX Coordinator will determine whether to investigate and adjudicate all of the allegations in accordance with this policy. The decision-maker will also make a Determination whether the TBR institution has established by a preponderance of the evidence that Sexual Misconduct took place in an institutional education program or activity.

- Force/Forced - words and/or conduct that, viewed from the perspective of a reasonable person, substantially impair(s) a person's ability to voluntarily choose whether to take an action or participate in an activity. Examples of Force include, without limitation:
  - Physical force (e.g., hitting, punching, slapping, kicking, restraining, choking, kidnapping, using a weapon, blocking access to an exit);
  - Words and/or conduct that would cause a reasonable person to fear:
    - Physical force or other harm to the person's health, safety, or property, or a third person's health, safety, or property;
    - Loss or impairment of an academic benefit, employment benefit, or money;
    - Disclosure of sensitive personal information or information that would harm a person's reputation;
    - Disclosure of video, audio, or an image that depicts the person's nudity or depicts the person engaging in a sexual act(s); or
    - Other immediate or future physical, emotional, reputational, financial, or other harm to the person or a third person.
- Formal Complaint: a document filed by a Complainant or signed by the Title IX Coordinator alleging Sexual Misconduct against a Respondent and requesting that the institution investigate the allegation. At the time of filing a Formal Complaint, a Complainant either must be participating in or attempting to participate in the institution's education program or activity implicated by the Formal Complaint.
- "Incapacitation" means that a person lacks the ability to actively agree to a sexual act because the person is asleep, unconscious, under the influence of an anesthetizing or intoxicating substance such that the person does not have control over their body, is otherwise unaware that a sexual act is occurring, or their mental, physical, or developmental abilities renders them incapable of making a rational informed judgment. Incapacitation is not the same as legal intoxication. See Clarifications for more information.

**Commented [BL5]:** The Final Rule/policy revisions require the filing of a Formal Complaint in order to initiate a Sexual Misconduct investigation and limit who may file one.

- Respondent – a person who has been alleged to be a perpetrator of conduct that could constitute Sexual Misconduct. A Respondent may also be referred to as a Party.
- “Retaliation” means to intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by 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. 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 this policy constitutes retaliation. 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.
  - The exercise of rights protected under the First Amendment does not constitute retaliation.
  - Charging an individual with a policy or 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.
- “Sexual Assault” is an umbrella term that includes rape, fondling, incest, and statutory rape.
  - “Rape” means 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” means the touching of the private body Part of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of age or because of temporary or permanent mental incapacity.
  - “Incest” means sexual intercourse between persons who are related to each other within degrees where marriage is prohibited by law.
  - “Statutory rape” means sexual intercourse with a person who is under the statutory age of consent.

- Title IX Sexual Harassment<sup>1</sup> – conduct on the basis of sex that satisfies either of the following: (1) an employee of an institution conditioning provision of an aid, benefit, or service of an institution on an individual's participation in unwelcome sexual conduct (quid pro quo); (2) 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 institution's education program or activity. "Reasonable person" means a reasonable person under similar circumstances as and with similar identities to the Complainant. TBR institutions will consider the totality of the circumstances, including without limitation, the context in which the conduct and/or words occurred, and the frequency, nature, and severity of the words and/or conduct. In no event shall Title IX sexual harassment be construed to prohibit speech protected by the First Amendment to the United States Constitution (e.g., merely offensive or insulting speech). See Clarifications for more information.
- Stalking – engaging in a course of conduct directed at a specific person that would cause a reasonable person to either (a) fear for his or her safety or the safety of others or (b) suffer substantial emotional distress. "Course of conduct" means two or more acts, including, but not limited to, acts in which a person directly, indirectly, or through third Parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates with or about another person, or interferes with another person's property. "Substantial emotional distress" means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling. For the definition of Stalking, "*reasonable person*" means a reasonable person under similar circumstances and with similar identities to the Complainant.

## Policy

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### I. Prohibition of Sexual Misconduct and General Information

- A. Sexual Misconduct is a form of sex discrimination prohibited by Title IX. TBR is committed to helping its institutions rid their campuses of any and all acts of Sexual Misconduct. As set forth in this policy, Sexual Misconduct includes Title IX Sexual Harassment, Dating Violence, Domestic Violence, Stalking, and Sexual Assault. TBR and its institutions strictly prohibit these offenses. Each institution shall adopt its own policy that is consistent with this policy.

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<sup>1</sup> With respect to conduct by employees, TBR institutions also prohibit sexual harassment in accordance with TBR Guideline P-080 and institutional policy.

1. Because Sexual Misconduct is a subset of the broader category of sexual harassment, not all sexual harassment allegations will be handled according to this policy. Allegations of sexual harassment that do not fall within the more limited definition of Sexual Misconduct or otherwise do not meet the criteria for filing a Formal Complaint will be handled in accordance with TBR Guideline P-080 and institutional policy.
2. **With** respect to allegations of Sexual Misconduct against faculty and staff in which a student is not the Complainant, additional laws and policies apply, most notably Title VII and anti-discrimination policies. In such situations and absent unusual circumstances, the Complainant may file a Formal Complaint pursuant to this policy or proceed pursuant to TBR Guideline P-080 and the appropriate institutional policy.
3. With respect to allegations of Sexual Misconduct in which a student is either a Complainant or Respondent and meets the criteria for filing a Formal Complaint, absent unusual circumstances, pursuing a Formal Complaint pursuant to this policy will be the appropriate method of addressing the allegations.
4. Upon receiving and assessing a report of Sexual Misconduct and/or sexual harassment, the Title IX Coordinator will decide whether the criteria for proceeding under this policy are met and whether another policy may apply. If there is a possibility of proceeding pursuant to TBR Guideline P-080 and another institutional policy, the Title IX Coordinator will explain the options.
5. This policy applies to conduct by third parties. An example of a third party is a vendor with whom the institution contracts to provide services.
6. This policy applies to all students and employees, regardless of sexual orientation or gender identity.

**Commented [BL6]:** The Final Rule, including the live hearing requirement, applies to both students and employees. For employees, institutions must comply with both Title VII and Title IX. Thus, for employees there is an option to pursue a Formal Complaint or use the existing process.

**B. Title IX Coordinators**

1. Each institution shall clearly identify its Title IX Coordinator's name and contact information (mailing address, phone number, email address, etc.) in its institutional policy and on its website.
2. To view a list of Title IX Coordinators by Institution, follow this link: <http://www.tbr.edu/oesi/title-ix-officers>

**C. **Lack of Bias and Equitable Treatment****

**Commented [BL7]:** These general concepts are in the current policy. They are more detailed in the revised version.

1. Neither the Title IX Coordinator, any investigator, any decision-maker, any person designated to facilitate an informal resolution process, nor anyone deciding an appeal will have a conflict of interest or bias for or against complainants or respondents generally, or against an individual Complainant or Respondent.
2. The Title IX Coordinator is responsible for appointing investigators, decision-makers, and appellate reviewers, and may appoint someone from another institution or someone not employed by a TBR institution in order to avoid potential bias or for other reasons. In the event of potential bias of the Title IX Coordinator, or if the Title IX Coordinator believes that another person should serve in that role for other reasons, the Title IX Coordinator should report the matter to TBR Central Office.
3. Institutions will provide a prompt, fair, and impartial investigation, adjudication, and, if applicable, disciplinary process. Institutions will treat Complainants and Respondents equitably, which includes an objective evaluation of all relevant evidence, including both evidence that tends to prove or disprove the allegations.
4. Credibility determinations will not be based on a person's status as a Complainant, Respondent, or witness.
5. The investigation will proceed with a presumption that the Respondent is not responsible for the alleged conduct unless and until a Determination of responsibility for a violation of this policy is made at the conclusion of the decision-making process. It is the institution's responsibility to establish Sexual Misconduct by a preponderance of the evidence.
6. The institution shall provide simultaneous written notification to the Parties of (1) any initial, interim, or final decision by an official authorized to resolve disciplinary matters, (2) any available appeal procedures for that decision, (3) any change to that decision, and (4) when that decision becomes final. The Parties will receive timely and equal access to information.

## II. How to Report Sexual Misconduct

- A. TBR institutions take seriously all complaints of sexual discrimination, sexual harassment, and Sexual Misconduct. This section explains the various reporting, complaint, and confidential disclosure options available to enable individuals to make

**Commented [BL8]:** The goal of this section is to explain how TBR will comply with both Title IX, which prohibits sex discrimination against students and employee, and Title VII, which applies only to employees.

informed choices about where to turn should they experience sexual discrimination, sexual harassment, or Sexual Misconduct.

1. TBR institutional policy shall explain how to report Sexual Misconduct to the Title IX Coordinator. Such a report can be made at any time, including during non-business hours, by using the telephone number or electronic mail address, or office mail address listed for the Title IX Coordinator.
2. TBR recommends that reports and complaints of all Sexual Misconduct be made to the Title IX Coordinator so that the institution can respond appropriately. Although reports and complaints of Sexual Misconduct may be made at any time, reports should be made as soon as possible so that the institution is best able to address the allegation.
3. TBR encourages anyone who witnesses, experiences, or has information about possible Sexual Misconduct to take reasonable actions to prevent or stop such actions. This may include speaking up while the behavior is taking place or immediately afterwards, reporting the behavior (in accordance with the reporting options outlined in this policy), directly intervening when it is safe and reasonable to do so, contacting law enforcement, or other means. A person who has been subjected to any type of Sexual Misconduct need not confront the other Party. The appropriate process to address the conduct is through this or other applicable policy.

B. **Supportive and Interim Measures**

1. After receiving a report of potential Sexual Misconduct, whether or not the report is a Formal Complaint, the Title IX Coordinator will contact the Complainant to discuss the availability of Interim/Supportive Measures, inform the Complainant of their availability, and consider the Complainant's wishes with respect to potential Interim/Supportive Measures. The Title IX Coordinator will also explain the process for filing a Formal Complaint.
2. The Title IX Coordinator, in conjunction with the appropriate department, may implement interim, supportive, or protective measures while assessing, investigating, and resolving the report. These Interim/Supportive Measures are non-disciplinary, non-punitive, individualized services and are offered without fee or charge to the Complainant or Respondent before or after the filing of a Formal Complaint or where no Formal Complaint has been filed.

**Commented [BL9]:** These general concepts are in the current policy. They are more detailed in the revised version.

3. They are designed to restore or preserve equal access to the institution's programs or activities without unreasonably burdening the other Party and may include measures designed to protect the safety of all Parties or the institution's educational environment or deter Sexual Misconduct.
4. These measures may include, but are not limited to: mutual no-contact directives; access to counseling services and assistance in setting up an initial appointment; changing schedules, assignments, or job/study locations to lessen or minimize contact; extensions of deadlines and course-related adjustments; limiting or barring an individual's or organization's access to certain institutional facilities or activities; providing an escort to ensure safe movement on campus; providing academic support services, such as tutoring; arranging for a Party to re-take a course or withdraw from a class without penalty; administrative leave; leave of absence; institution-imposed leave or physical separation from individuals or locations.
5. The institution will attempt to maintain the confidentiality of such Interim/Supportive Measures, to the extent that it can do so without impairing its ability to effectuate the Interim/Supportive Measures or to investigate and adjudicate the complaint.

C. Formal Complaint

1. Any person who has been a victim of Sexual Misconduct that took place within an education program or activity of a TBR institution in the United States may file a Formal Complaint under this policy.
2. A Complainant who wants a TBR institution to conduct an investigation and take action in accordance with this policy must file a Formal Complaint alleging Sexual Misconduct.
3. A Complainant must submit a written Formal Complaint in person, by mail, or via electronic mail to the Title IX Coordinator. The document must contain the Complainant's physical signature or a "digital signature." (A digital signature is information transmitted electronically that enables the Title IX Coordinator to determine that the Complainant is the person submitting the complaint, including, but not limited to, an email from a TBR institutional account or a typed version of the Complainant's name. A digital signature need not reproduce a written

**Commented [BL10]:** This is a major change. Only Complainants and the Title IX Coordinator may file a Formal Complaint, and the Complainant must do so if they want the institution to investigate and take action pursuant to this policy. Formal Complaints must be filed in writing.

signature.) A Formal Complaint cannot be submitted anonymously. Only the Title IX Coordinator can submit a Formal Complaint on behalf of another person.

4. Although TBR institutions will attempt to consider the wishes of Complainants, including that no investigation be conducted, TBR institutions will also consider their obligations under both TBR policy and applicable law, including Title VII of the Civil Rights Act of 1964. Thus, when the Title IX Coordinator receives a report of Sexual Misconduct, and especially when the complaint involves an employee, the Title IX Coordinator may decide to investigate the matter pursuant to Guideline P-080 and institutional policy, even if the Complainant does not want the report investigated. If the Title IX Coordinator decides to file a Formal Complaint, the Title IX Coordinator is not a “Party” to any investigation, Determination or hearing process.
5. Complainants should provide as much of the following information as possible: what happened, where, and when; names of all people involved, including witnesses (if any); supporting documentation (if any); and contact information. TBR encourages reporting of Sexual Misconduct even if some or all information is unavailable or cannot be provided. The Title IX Coordinator will explain their role, the options for reporting an incident, potential available Interim/Supportive Measures, and the available resources for assistance.

D. Confidential Resources (who will not share information with Title IX Coordinator)

1. TBR encourages victims of Sexual Misconduct to talk to someone about what happened, whether they want their report to be investigated or not. Institutions should offer Complainants someone to talk to confidentially, so that they can get the support they need. Institutional policy shall explain that some resources are confidential and should be considered if the Complainant does not want the institution to investigate the matter.
2. If the institution employs or contracts with such individuals, confidential resources include licensed professional counselors/mental health providers when acting in that role; pastoral counselors acting in that capacity; and medical professionals when acting in a clinical role. These resources do not report any information about an incident to the Title IX Coordinator without a Complainant’s permission. Institutional policies shall identify and provide contact information for any confidential reporting options within the institution.

Commented [BL11]: This section is consistent with existing policy but expanded.



3. Counselors and health care providers not affiliated with the institution will generally maintain confidentiality and not share information with the institution unless the Complainant requests the disclosure and signs a consent or waiver form. However, these resources may have reporting obligations under state or federal law. For example, healthcare providers and certain other individuals are required to notify law enforcement when a person seeks treatment for injuries related to a violent crime, including injuries resulting from Sexual Misconduct or abuse of a minor.

E. **Reporting by Employees**

1. Institutional policy shall provide that
  - a. All employees who learn of Sexual Misconduct (or any form of sexual harassment or sex discrimination, or retaliation) are encouraged to report such matters to the Title IX Coordinator.
  - b. Supervisors and managers who learn of Sexual Misconduct (or any form of sexual harassment or sex discrimination, or retaliation) *must immediately* report such concerns to the Title IX Coordinator.

F. **Anonymous and Third-Party/Bystander Reporting**

1. Institutional policy shall encourage third parties to report incidents of Sexual Misconduct to the Title IX Coordinator. The institution may not be able to move forward with third-party reports if the Complainant does not wish to file a Formal Complaint or cooperate with an investigation.
2. After providing a report, third parties are not entitled to information about the institution's investigation and response due to privacy concerns and applicable federal and state laws.

G. **Abuse of Minors**

1. Institutional policy shall include a statement that Tennessee law mandates reporting by any person who has knowledge of physical or mental harm to a child if: (1) the nature of the harm reasonably indicates it was caused by brutality, abuse, or neglect; or (2) on the basis of available information, the harm reasonably appears to have been caused by brutality, abuse, or neglect. Tennessee law also mandates reporting by any person who knows or has reasonable cause to suspect that a child has been sexually abused, regardless of whether the child has sustained any apparent injury as a result of the abuse.

**Commented [BL12]:** The Final Rule does away with the concept of "responsible employee." The institution is only liable if it has "actual knowledge," which is the Title IX Coordinator or any employee with authority to institute corrective measures. The standard included in this section is consistent with other policies and intended to comply with Title VII, as the Sexual Misconduct policy applies to both employees and students.

2. In the event of a life-threatening emergency, a report of child abuse or child sexual abuse should be made by calling 911. In other cases, a report of child abuse or child sexual abuse must be made immediately to one of the following authorities:
  - a. The Tennessee Department of Children's Services (the Central Intake Child Abuse Hotline is 1-877-237-0004);
  - b. The sheriff of the county where the child resides;
  - c. The chief law enforcement official of the city where the child resides; or
  - d. A judge having juvenile jurisdiction over the child.
3. In addition, institutional employees shall make a report of child abuse or child sexual abuse in connection with an institutional program or activity to the Title IX Coordinator. Note that a report to an institutional law enforcement or security agency is not sufficient to comply with state law.

H. Law Enforcement

1. The following law enforcement agencies listed in this policy are available for emergency response, facilitating medical transport, investigating incidents of a criminal nature, referrals, and preserving evidence. Law enforcement may be required to report potential violations of this policy to the Title IX Coordinator and to report incidents of sexual assault and other criminal acts of a serious nature to other law enforcement authorities.
2. TBR institutions shall list applicable local law enforcement agencies.

I. Reporting Pursuant to the Nottingham Act.

1. Unless the victim of a rape does not consent to the reporting of an offense, the chief security officer or chief law enforcement officer of each institution shall immediately notify the local law enforcement agency with territorial jurisdiction over the institution if the officer is in receipt of a report from the victim alleging that any degree of rape has occurred on the property of the institution. The chief security officer or chief law enforcement officer shall designate one (1) or more persons who shall have the authority and duty to notify the appropriate law enforcement agency in the absence of the chief security officer or chief law enforcement officer. In the case of an alleged rape, the institution's law enforcement agency shall lead the investigation. After notifying the local law

enforcement agency, the institution shall cooperate in every respect with the investigation conducted by the law enforcement agency. T.C.A. § 49-7-129.

2. If the victim does not consent to the reporting, the chief security officer or chief law enforcement officer of each institution shall not report the offense to the local law enforcement agency. T.C.A. § 49-7-2207; T.C.A. § 49-7-129.

### III. Additional Information

#### A. No Retaliation

1. Retaliation against a person who makes a report or files a complaint, participates or assists in an investigation, encourages another to file a complaint, or opposes Sexual Misconduct (or any other form of discrimination prohibited by institutional policy) is prohibited. Individuals must not interfere with an investigation. Retaliation will result in disciplinary measures, up to and including termination or expulsion.
2. In order to help prevent retaliation, institutional policy is to keep confidential the identity of anyone who has made a report or complaint of sex discrimination, including anyone who has filed a Formal Complaint of Sexual Misconduct, any Complainant, any Respondent, and any witness except as is required to carry out an institution's responsibilities under this policy, as permitted by FERPA, or as required by law.
3. Anyone who wishes to file a complaint of retaliation should contact the Title IX Coordinator.

#### B. Emergency Removal/Administrative Leave

1. If it appears, based on an allegation of Sexual Misconduct, that a student may constitute an immediate and direct threat to the physical health or safety of another individual, the institution will conduct an individualized inquiry and risk analysis and may place the student on interim suspension on an emergency basis. If the institution implements an interim suspension, the student shall be given the opportunity at the time of the decision, or as soon thereafter as reasonably possible, to contest the interim suspension. Institutions shall follow the procedures set forth in TBR Policy 3.02.00.01-General Regulations on Student Conduct & Disciplinary Sanctions (and applicable institutional policies) before placing any student on interim suspension.

**Commented [BL13]:** Interim suspension is still permitted, but it must meet both the criteria in the student conduct rule and also this definition from the regulations, which is slightly different.

2. The institution may place employees on administrative leave or similar action while addressing allegations of Sexual Misconduct.
3. Visitors, vendors, and other third Parties may be removed from the premises consistent with applicable policies and procedures.

C. Court Orders

1. Individuals may seek orders of protection, restraining orders, or other similar orders from a court of law.

D. Institutions shall not create a separate procedure for investigating and resolving complaints of Sexual Misconduct involving athletes or any other subgroup of students.

E. Participation in the Formal Complaint process by a Complainant, Respondent, institution, or other person does not waive applicable privileges, including attorney-client privilege, doctor-patient privilege, the peer review/quality improvement privilege, etc. The holder of a privilege may waive it in certain circumstances.

IV. Investigation and Outcomes

A. The Office of General Counsel shall always be consulted prior to investigation.

B. Intake and Assessment of Formal Complaints

1. The Title IX Coordinator will assess the nature of reports and Formal Complaints, including whether one or more allegations meet the criteria for the filing of a Formal Complaint (e.g., whether the allegations include conduct that, if proven, took place in the United States and will constitute Sexual Misconduct in an education program or activity by a participant or someone attempting to participate in the education program or activity). Formal Complaints that include some allegations that, if proved, constitute Sexual Misconduct and some that do not meet that definition, will be handled pursuant to this policy. As appropriate, the Title IX Coordinator may initiate proceedings under another policy, refer the matter to another department, and/or inform the Complainant about the availability of other methods to address the allegations.
2. As part of the assessment, the Title IX Coordinator or designee may contact the Complainant and ask for information about the allegations. Supporting documents, such as emails, photos, text messages, and any other evidence should be preserved. If witnesses were present or have relevant knowledge, it is important to identify them, state what they may know, and inform the investigator how they can be contacted.

**Commented [BL14]:** This is a major revision to the process. Under current processes, the Title IX Coordinator investigates.

3. Where Formal Complaints involving more than one Complainant and/or more than one Respondent arise out of the same facts and circumstances, the Title IX Coordinator may consolidate Formal Complaints.

C. Notice of Allegations

1. Upon receipt of a Formal Complaint, the Title IX Coordinator will provide written notice to known Parties. (A Notice of Allegations will be provided even if the Formal Complaint is dismissed at the same time or shortly after the Notice of Allegations issues (e.g., the allegations if proven do not meet the definition of Sexual Misconduct)). The Notice of Allegations will enable both Parties to appeal the dismissal or to proceed under another policy.) The Notice of Allegations shall contain:
  - a. an explanation of the investigation and grievance process, including a copy of or link to institutional policy, as well as any other applicable policies;
  - b. the availability of an informal resolution process;
  - c. explanation of the allegations potentially constituting Sexual Misconduct in sufficient detail and with sufficient time to prepare a response before any initial interview. A Respondent will have at least three (3) business days after issuance of a Notice of Allegations prior to an initial interview, but depending on the nature of the allegations, additional time may be offered or requested;
  - d. the identity of the Parties involved in the incident, if known, and the date and location of the alleged incident;
  - e. a statement that the Respondent is presumed not responsible for the alleged conduct unless and until a Determination of responsibility has been issued;
  - f. a statement that the Parties may have an advisor of their choice at meetings they are permitted to attend. The advisor may be, but is not required to be, an attorney. (Parties may hire their own attorneys. At a live hearing only, TBR institutions will provide advisors to Parties who do not have their own);

**Commented [BL15]:** The requirements for the Notice of Allegations are very particular.

- g. any statements in TBR institutional policies, procedures, or guidelines that prohibit knowingly making false statements or knowingly submitting false information during the process; and
  - h. a statement that retaliation against a person who makes a report or files a complaint, participates or assists in an investigation, encourages another to file a complaint, or opposes Sexual Misconduct is prohibited and will result in disciplinary measures, up to and including termination or dismissal.
2. If, during the course of an investigation, the institution decides to investigate allegations about the Complainant or Respondent that are not included in the Notice of Allegations, the institution will provide additional written Notice of Allegations to known Parties.

D. Dismissal of Formal Complaints

- 1. The Title IX Coordinator shall obtain advice from the Office of General Counsel before dismissing a Formal Complaint.
- 2. If the Title IX Coordinator concludes that the Complainant was not participating in or attempting to participate in an institutional education program or activity at the time of the Formal Complaint or that the conduct alleged in a Formal Complaint would not constitute Sexual Misconduct even if proved, did not occur in an institution's education program or activity, or did not occur against a person while in the United States, the Title IX Coordinator shall dismiss the Formal Complaint.
- 3. The Title IX Coordinator has discretion to dismiss a Formal Complaint or any allegations in it, if at any time during the investigation or hearing a Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the Formal Complaint or any allegations in it; the Respondent is no longer enrolled by, employed by, or associated with a TBR institution; or specific circumstances prevent the TBR institution from gathering evidence sufficient to reach a Determination as to the Formal Complaint or allegations therein.
- 4. The Title IX Coordinator may decide to dismiss a Formal Complaint of Sexual Misconduct and refer the matter for disposition pursuant to a different policy, guideline, or process when an allegation of Sexual Misconduct is dismissed or when a Formal Complaint ceases to include an allegation of Sexual Misconduct.

**Commented [BL16]:** Dismissal of a Formal Complaint may be required or at the option of the Title IX Coordinator. When Formal Complaints are dismissed, they often may be investigated pursuant to P-080 and institutional policy.

5. Upon dismissal of a Formal Complaint for any reason, the Title IX Coordinator will promptly send written notice explaining the reasons for dismissal to the Parties. The dismissal notice will also explain whether the TBR institution will investigate or respond to the allegations under another policy, guideline, or process and the availability of other methods to address the allegations.

E. **Informal Resolution**

1. Because a full investigation and adjudication process may not be in the best interests of all concerned, the Title IX Coordinator may decide to offer an informal resolution process. The informal resolution process is designed to provide flexibility in crafting a resolution to a Formal Complaint that meets the needs of the Parties and the institution. Informal resolutions may include meetings facilitated by the TBR institution or third parties, resolutions facilitated by the Title IX Coordinator without formal meetings, mediations, and/or restorative justice concepts. Disciplinary action may or may not be part of any informal resolution. Both Parties must agree in writing to participate in any informal resolution process that the Title IX Coordinator may offer.
2. An informal resolution process is only available after the filing of a Formal Complaint and prior to a Determination regarding responsibility. If the Title IX Coordinator believes an informal resolution may be appropriate, the Title IX Coordinator will propose an informal resolution process in either the initial Notice of Allegations or a subsequent written document. The Title IX Coordinator may discuss with the Parties the details of how the process will work. The written notice will contain the allegations or refer to the Notice of Allegations, set out the informal resolution process, explain that at any time prior to agreeing to a resolution, the Complainant, Respondent, or the institution may withdraw from the informal resolution process and resume the investigation and adjudication process under this policy, and identify any records that will be maintained or shared related to the process.
3. The Title IX Coordinator will not offer or facilitate an informal resolution process to resolve allegations that an employee engaged in Sexual Misconduct against a student.

F. **Investigation of Formal Complaints**

**Commented [BL17]:** This section expands on current policy.

**Commented [BL18]:** This follows the requirements of the regulations and is more prescriptive of how an investigation must be done than current policy. Also, the investigator does not make findings of fact or recommendations as to whether policy was violated.

1. The TBR institution will investigate all Formal Complaints, unless dismissed or resolved through an informal resolution. During the investigation:
  - a. The institution will not access, consider, disclose, or otherwise use a Party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional acting in the professional's capacity and made or maintained in connection with the treatment to the Party, unless the Party voluntarily consents in writing;
  - b. The investigator will conduct an investigation that is appropriate under the circumstances. The investigation will include a review of documents and physical evidence, as well as interviews with the Parties and other. The investigator may request access to premises, records, and documents deemed relevant. As the investigation progresses, the investigator may seek clarification, including during a subsequent interview, from any person participating in the investigation regarding the incident or their statement. A Party who learns or remembers any additional information should notify the investigator immediately. The Parties will have an equal opportunity to provide evidence and to identify witnesses, including fact and expert witnesses. Parties are encouraged to provide, as soon as possible, any evidence that the Party believes to be relevant and wants the investigator to consider. If at all possible, all evidence should be provided in time for the investigator to make it available for inspection and review;
  - c. Although the Parties are encouraged to provide the institution with information and evidence related to the allegations, the institution is ultimately responsible for gathering evidence sufficient to reach a Determination regarding responsibility;
  - d. The institution will not restrict the Parties from discussing the allegations under investigation or from gathering and presenting relevant evidence. Any restrictions on the ability of the Parties to discuss matters related to the proceeding but which are not under investigation will be explained in the Notice of Allegations;



- e. Each Party will have the opportunity to obtain and to be accompanied to a meeting or proceeding by an advisor of their choice, who may, but is not required to be, an attorney, in accordance with Section IV.H. below;
- f. When a Party is invited or expected to participate in a meeting, the institution will provide written notice of the date, time, location, participants, and purpose of the meeting, interview, or hearing, with sufficient time for the Party to prepare to participate;
- g. Both Parties will have 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 evidence that is directly related to the allegations but upon which the institution does not intend to rely in reaching a Determination regarding responsibility. The institution will include both evidence that tends to prove and disprove the allegations, whether obtained from a Party or other source, so that each Party can meaningfully respond to the evidence prior to the conclusion of the investigation;
- h. Prior to the completion of an investigative report, the institution will send to each Party the evidence subject to inspection and review. Unless a Party requests that the institution not do so, the institution will also send the evidence to each advisor who has been identified. An institution may decide to provide access to evidence through electronic means that is not available for download. In such case, the Parties and their advisors are prohibited from, directly or indirectly, photographing or reproducing such evidence (unless the Party has independent access to the evidence independent of the portal, e.g., documents submitted by the Party or publicly available information); and
- i. The institution will provide at least ten (10) calendar days for the Parties to respond to the evidence provided for inspection and review. The investigator will share any written response with the other Party and will consider any written response prior to completing the investigative report.

**Commented [BL19]:** The regulations have a broader disclosure requirement than in current policy or state law.

G. Investigation Report

- 1. At the conclusion of the investigation, the investigator will prepare written report. The report shall:

**Commented [BL20]:** There are significant differences in the revised policy, notably including that the investigation report summarizes the evidence. It does not make factual findings or recommend a policy violation.

- a. identify the allegations;
  - b. identify relevant policies, guidelines, and other standards;
  - c. explain the procedural steps taken between receipt of the Formal Complaint and the conclusion of the investigation, including all notifications to the Parties, interviews with the Parties, interviews with other witnesses, dates of all interviews, any site visits, and the methods used to gather evidence; and
  - d. fairly summarize the relevant evidence.
2. The written report shall not make findings of fact or conclusions regarding the application of facts to this policy.
  3. At least (ten) 10 calendar days prior to a hearing, the investigator will send to each Party the investigation report in either electronic or hard copy, for their review and written response. Unless a Party requests that the institution not do so, the institution will also send the investigation report to an advisor whom the Party has been identified.
  4. The Parties should provide any written response as soon as possible, as the investigator may issue an amended investigation report if the investigator deems appropriate and if a Party provides comments in sufficient time for the investigator to do so. The Parties' written responses and any amended investigation report will be sent to the decision-maker.

**Commented [BL21]:** The current version of policy does not require sharing a draft report.

#### H. Advisors

1. Both the Complainant and the Respondent will be permitted to have an advisor of their choosing present during meetings where their attendance is permitted or expected. Nothing in this policy shall be read to require that an institution allow a Party to attend an interview of the other Party or of a witness.
2. The advisor may accompany and confer privately with a Party, but the advisor may not interrupt, speak on behalf of a Party, or otherwise actively participate in any meeting, except for conducting cross-examination at a live hearing.
3. An advisor's failure to comply with these guidelines may result in the termination of the meeting or the advisor no longer being permitted to be present.
4. TBR and institutional personnel employed in the offices responsible for the disciplinary proceedings described in this policy, along with those in the chain of command, personnel employed by OGC, and others whose participation could

**Commented [BL22]:** This is generally consistent with current policy,

create a conflict of interest with their duties are not eligible to serve as advisors.

The institution shall not otherwise limit the choice of an advisor.

5. If there is a question or concern about a possible advisor, the Title IX Coordinator should be consulted. A Party choosing to have an attorney present as an advisor must provide advance notice so that a member of OGC can attend any meeting at which an attorney will be present.

I. Recordings

1. Parties are not permitted to record any meeting conducted pursuant to this policy.
2. When a live hearing is conducted, the institution will create an audio recording, audiovisual recording, or transcript and make it available to the Parties for inspection and review.

J. Past Relationships and Conduct

1. Previous sexual relationships of the Complainant and Respondent with third parties generally are irrelevant.
2. A past sexual relationship between the Complainant and Respondent may or may not be relevant. For example, past sexual encounters may provide insight on communication patterns for purposes of determining whether consent was present.
3. Questions and evidence about a 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 Respondent and are offered to prove consent.

K. Standard of Evidence

1. TBR institutions use the preponderance of the evidence standard of evidence in evaluating whether Sexual Misconduct occurred. This standard looks at whether it is "more likely than not" that this policy was violated.
2. The burden of proof will remain with the institution through the Determination.

L. Timeline

1. Formal Complaints typically will be resolved (exclusive of any appeals) within 90 calendar days of filing.

Commented [BL23]: Extended from 60 days, but with ability to extend.

2. Appeals will be resolved within fifteen (15) calendar days of the filing of an appeal.
3. Given the many variables and factors that may arise in such cases, additional time may be needed in some cases. Any departure from these frames will be for good cause and communicated in writing or by email to both the Complainant and the Respondent simultaneously, along with a new timeline and explanation of the reasons. Good cause to extent the deadlines includes, but is not limited to, the absence of a Party, a Party's advisor, or witness; concurrent law enforcement activity; or the need for language assistance or the accommodation of disabilities.
4. Incompletion of the process within such time frames is not cause for dismissal of a Formal Complaint.

M. Parallel Investigations with Law Enforcement

1. The filing of a police report or the pendency of civil or criminal proceedings does not preclude the institution from proceeding with its investigation and Determination.
2. The investigation and Determination may be delayed until law enforcement has finished gathering evidence and indicated that the institution may proceed with an investigation, but the institution generally will not wait for the conclusion of any criminal proceeding.
3. Civil or criminal proceedings are separate and distinct from internal institutional proceedings, and they may or may not run parallel to one another. However, the institution may be required by law to provide information in civil or criminal proceedings.
4. Institutional policies shall set forth parameters and clarify what information may and may not be shared during a parallel investigation with law enforcement (e.g., via a memorandum of understanding with local law enforcement).

N. Live Hearings

1. The institution will conduct a live hearing of Formal Complaints not dismissed pursuant to this policy in order to make a Determination whether this policy has been violated. The decision-maker appointed by the Title IX Coordinator has the authority to maintain order at the hearing and make all decisions necessary for the fair, orderly, and expeditious conduct of the hearing. The decision-maker

**Commented [BL24]:** This is a major revision on how findings of Sexual Misconduct are made.

shall be the final decider concerning all aspects of the hearing, including prehearing matters and at the hearing, how evidence is examined and the order of witnesses.

2. At the request of either Party, the institution will provide for the live hearing to be conducted with the Parties located in separate rooms with technology enabling the decision-maker and Parties to simultaneously see and hear the Party or the witness answering questions.
3. In cases involving more than one Respondent, any Party may request separate hearings by submitting a request at least five (5) business days before the hearing. The Title IX Coordinator will decide whether to grant the request.
4. Live hearings may be conducted with all Parties physically present in the same geographic location or, at the institution'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.
5. At least ten (10) business days prior to a live hearing, the institution will provide both Parties with written notice of the following:
  - a. The time, place, date of the hearing, and electronic access information, if applicable;
  - b. The name of each witness the institution expects to present or be present at the hearing and those the institution may present if the need arises;
  - c. The right to request a copy of the investigative file (other than portions that are protected by law or privilege), which includes all of the evidence obtained as part of the investigation that is directly related to the allegations raised in the Formal Complaint;
  - d. The right to request copies of all documents, copies of electronically stored information, and access to tangible evidence that the institution has in its possession, custody, or control and may use to support claims or defenses;
  - e. The right to have an advisor of the Party's choice, who may be, but is not required to be an attorney, and that if the Party does not have an advisor present at the hearing, the institution will provide an advisor of the institutions' choice, without fee or charge, to ask the other Party and any

witnesses all relevant questions and follow-up questions on behalf of that Party;

- f. Any Party in need of an institution-provided advisor must inform the Title IX Coordinator at least five (5) business days before the hearing;
  - g. Any cross-examination of any other Party or witness must be conducted by the advisor; and
  - h. Other information may be included in the notice of hearing.
6. When notice is sent by U.S. mail or courier service, the notice is effective on the date the notice is mailed or delivered to the courier service. When notice is hand delivered by the institution, notice is effective on the date that the notice is delivered to the Parties. When notice is sent by email, the notice is effective on the date that the email is sent to the Parties' institution-provided email account.
  7. The decision-maker may conduct a pre-hearing meeting or conference with the Parties and their advisors to discuss pre-hearing issues, including any technology to be used at the hearing and the general rules governing the hearing.
  8. The decision-maker may allow a temporary delay of the process or the limited extension of time frames for good cause with written notice to the Parties of the delay or extension and the reasons for the action. Good cause may include, but is not limited to, 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.
  9. If a Party fails to attend a hearing, the decision-maker may proceed without that Party's participation.
  10. During the hearing, the decision-maker will make evidence subject to review and inspection during the investigation phase available to give each Party equal opportunity to refer to that evidence, including for purposes of cross-examination.
  11. 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 provide 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.

12. Only relevant cross-examination questions may be asked of a Party or witness. Before a Complainant, Respondent, or witness answers a cross-examination or question from someone other than the decision-maker, the decision-maker will first determine whether the question is relevant and explain any decision to exclude a question as not relevant.
13. The decision-maker will 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 the privilege has waived the privilege.
14. The decision-maker will permit each Party's advisor to ask the other Party and any witnesses all relevant questions and follow-up questions, including those challenging credibility. Such cross-examination at the live hearing will be conducted directly, orally, and in real time by the Party's advisor and never by a Party personally. Conducting cross-examination will be the advisor's only opportunity to speak. Advisors will not engage in other presentation of arguments or evidence, including opening statements, closing arguments, or direct examinations.
15. If a Party does not have an advisor at the live hearing, the institution will provide without fee or charge to that Party an advisor. The institution will choose the advisor.
16. If a Party or witness does not submit to cross-examination at the live hearing, the decision-maker will not rely on any statement of that Party or witness in reaching a Determination regarding responsibility; provided however, that the decision-maker 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.
17. For good cause shown, a decision-maker may permit the participation of witnesses who were not identified by the Party to the investigator, or the inclusion of evidence not provided by the Party to the investigator.
18. The institution will create an audio or audiovisual recording, or transcript, of a live hearing and make it available to the Parties for inspection and review.

**Commented [BL25]:** Advisors must conduct cross-examination, but not the rapid-fire way it is done in a court hearing.

**Commented [BL26]:** The idea is to create a pool similar to the Methods of Administration process so that institutions can provide advisors for each other.

19. The decision-maker may dismiss the Formal Complaint or any allegations therein, if at any time during the hearing a Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw a Formal Complaint or any allegations therein, the Respondent is no longer enrolled or employed by the institution, or specific circumstances prevent the institution from gathering evidence sufficient to reach a Determination as to the Formal Complaint or allegations therein.
20. If the decision maker dismisses the Formal Complaint during the grievance process, the decision-maker will promptly notify the Title IX Coordinator, who will promptly send written notice of the dismissal and reasons therefor simultaneously to the Parties.

O. **Written Determination**

1. Within fifteen (15) business days of the hearing, the decision-maker will issue a written Determination, based on a preponderance of the evidence standard, which will be provided to the Parties simultaneously.
2. The Determination becomes final either on the date that the institution provides the Parties with a written result of an appeal, or if an appeal is available but not filed, the day after the deadline to appeal.
3. The Determination will include:
  - a. Identification of the allegations potentially constituting Sexual Misconduct, as well as identification of any additional allegations that are being resolved but which do not constitute Sexual Misconduct;
  - b. A description of the procedural steps taken between receipt of the Formal Complaint and the Determination, including all notifications to the Parties, interviews with Parties and witnesses, site visits, methods used to gather other evidence, and any hearings held;
  - c. Findings of fact supporting the Determination;
  - d. Conclusions regarding the application of this policy, as well as any other relevant policy, guidelines, or code, to the facts;
  - e. A statement of, and rationale for, the result as to each allegation before the decision-maker, including a Determination regarding responsibility;

**Commented [BL27]:** The Final Rule has strict requirements regarding what must be included, which are consistent with existing practices.



- f. Any disciplinary action that the decision-maker imposes on the Respondent, including referral to another process, such as tenure termination proceedings;
- g. Any remedies that the institution will provide designed to restore or preserve equal access to the Complainant; and
- h. The permissible bases and procedures, including timelines, for appeals by the Parties.

P. Remedies and Disciplinary Action Following Determinations of Violations

- 1. The institution will provide remedies where a Determination of responsibility for Sexual Misconduct has been made. The institution will follow this policy before the imposition of any disciplinary sanctions for Sexual Misconduct that are not supportive/interim measures.
- 2. Remedies will be designed to restore or preserve equal access to education programs and activities and will include discipline under the applicable policies and procedures. Remedies may include verbal warnings, written warnings, final written warnings, suspension, termination of employment, non-renewal of appointment, or dismissal from the institution. Faculty may be subject to proceedings under TBR Policies 5.02.03.10 and 5.02.03.30.
- 3. Remedies should also consider improvements to the campus-wide environment. It is the intent of TBR that institutions consider the impact of an incident of Sexual Misconduct on the campus as a whole or specific groups or areas of campus. For example, specific training may be needed for a student group.
- 4. The Title IX Coordinator is responsible for ensuring effective implementation of the remedies.

Q. Appeals/Post-Determination Procedures

- 1. Parties are permitted to appeal to the institution's President (or other person appointed by the Title IX Coordinator) from a Determination regarding responsibility (or no responsibility) and from a dismissal of a Formal Complaint or of any allegations in a Formal Complaint on the basis of:
  - a. procedural irregularity that affected the outcome of the matter;
  - b. new evidence that was not reasonably available at the time the Determination or dismissal was made, but only if that new evidence could affect the outcome of the matter;

- c. 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.
2. A Party wishing to appeal a Determination regarding responsibility or the dismissal of a Formal Complaint or any allegations therein must file a written appeal with the Title IX Coordinator within seven (7) business days of the date of the Determination or the dismissal. The written appeal must identify the reasons for the appeal.
3. As to all appeals, the Title IX Coordinator will:
  - a. Notify the other Party in writing when an appeal is filed;
  - b. Implement appeal procedures equally for both Parties;
  - c. Ensure that the decision-maker(s) for the appeal is not the same person as the investigator, the decision-maker, or Title IX Coordinator;
  - d. Provide each Party five (5) business days to provide a written statement in support of, or challenging, the Determination.
4. The decider of the appeal will issue a written decision describing the result of the appeal and the rationale for the result, and will provide the written decision simultaneously to the Parties.

V. Victim Services

- A. TBR intends for each institution to provide resources and assistance to victims of Sexual Misconduct.
  1. Institutions Without On-Campus Services
    - a. For institutions without medical, counseling, or law enforcement services on their campuses, these institutions should partner with local community organizations that may be able to provide these services for victims of Sexual Misconduct.
    - b. Any such partnership shall be clearly communicated to students, faculty, and staff.
    - c. Any victim presenting to an institution without on-campus resources shall be informed about the agreement and encouraged to seek services from the partnering community organizations.
  2. Victim Services Policy

- a. Each institution shall adopt a policy describing the assistance and services it provides to victims. Each policy shall include, at a minimum, the following:
- (1) The identity and contact information for any trained on- and off-campus advocates and counselors who can provide an immediate confidential response in a crisis situation;
  - (2) Emergency numbers for on- and off-campus safety, law enforcement, and other first responders, including the Title IX Coordinator;
  - (3) A list of health care options, both on- and off-campus, including options to seek treatment for injuries, preventative treatment for sexually transmitted diseases, and where and how to get a rape kit or find a Sexual Assault Nurse Examiner (SANE);
  - (4) A statement that it is very important for the Complainant to seek medical attention immediately so that the Complainant can be screened for sexually transmitted diseases/pregnancy/drugs that may have been used to incapacitate, obtain emergency contraception, and receive treatment for any injuries. Valuable physical evidence can be obtained from the Complainant and the Complainant's clothing. Even those who are unsure whether to make a police report or take action may wish to have a forensic examination, which will facilitate the identification and preservation of physical evidence;
  - (5) A statement that to help preserve evidence in the event of a sexual assault, it is important for the Complainant not to change clothes or bedding and not take a shower, douche, use the toilet, brush their teeth, or clean up until police have had a chance to gather evidence. However, if a Complainant has already changed clothes or cleaned up/showered, evidence may still be collected. The Complainant should leave any clothes or bedding unfolded and undisturbed, if

possible. If clothing or bedding must be moved, items should be kept separate to prevent transfer of body fluids or other trace evidence. Parties should not delete or destroy any text messages, social media, emails, voicemails, written notes, or any other documents that may be relevant.

- (6) A list of locations, including contact information, for any available advocate (e.g., a local rape crisis center, on-campus advocacy program) who can accompany a victim to the hospital or health provider;
- (7) A statement that these services are available for victims of Sexual Misconduct whether or not a victim chooses to make an official report or participate in the institutional disciplinary or criminal process.

#### VI. Education, Training, and Awareness

- A. It is the intent of TBR that its institutions will offer educational programming and training to their students, faculty, and staff that are intended to end Sexual Misconduct.
- B. TBR institutions are encouraged to provide user friendly materials to explain the policy and how victims can get help, and provide those materials online and through other strategies appropriate for the campus. Institutional education related to Sexual Misconduct should be provided to incoming students. Institutions should promote awareness of rape, acquaintance rape, domestic violence, dating violence, sexual assault, and stalking. Education should also include information on how to prevent sexual assault, such as information on bystander intervention, as well as how to recognize abusive behavior and avoid potential abusive relationships. Students shall be trained on the procedures for filing a report, as well as procedures for institutional disciplinary action in cases of alleged sexual violence. Institutional education will also inform students of the sanctions and protective measures that the institution may impose once a report of sexual violence has been made.
- C. Institutions shall establish procedures for regularly reviewing, evaluating, and updating the policy. Institutional training may provide training to all employees likely to witness or receive reports of sexual harassment, including faculty, school law enforcement, school administrators, school counselors, athletic coaches, and health personnel. Training should ensure that employees with the authority to address sexual harassment know

how to appropriately respond to reports of sexual harassment, that employees know whether they are obligated to report sexual harassment the Title IX Coordinator or other designated official, and that all employees understand how to respond to reports of sexual harassment. Training should also ensure that professional counselors, pastoral counselors, and non-professional counselors or advocates also understand the extent to which they may keep a report confidential.

- D. Title IX Coordinators, investigators, decision-makers, institution-provided advisors, any person designated to facilitate an informal resolution process, and any person designated to resolve an appeal will receive training on the definition of Sexual Misconduct, the scope of TBR and institutional education programs and activities, 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. Such individuals will receive training on issues of relevance related to creating and/or reviewing an investigative report that fairly summarizes relevant evidence. Training will not rely on sex stereotypes and will promote impartial investigations and adjudications of Formal Complaints.
- E. Institutions will notify applicants for admission and employment, students and employees, that it does not discriminate on the basis of sex in its education programs and activities and will provide the name, title, office address, electronic mail address, and telephone number of the Title IX Coordinator in that notification.

#### VII. Effective Date

- A. This policy is effective August 14, 2020.
- B. If any provision of the Title IX regulations on which this policy is based is enjoined or held invalid as it applies to the TBR institution or the Title IX regulations' application to any person, act, or practice is enjoined or held invalid as it applies to the TBR institution, the remainder of this policy or the application of its provisions to any person, act, or practice shall not be affected thereby.
- C. For conduct that occurs across multiple versions of this policy, complaints of Sexual Misconduct will be addressed utilizing the procedures outlined in the version of this policy in effect as of the date of the Notice of Allegations. The "Definitions" and "Clarifications" sections of the policy in effect as of the date of the alleged incident will be used. Complaints and reports of conduct spanning more than one version of the

policy will be addressed using the “Definitions” and “Clarifications” sections in the version of the policy in effect at the time of the most recent alleged incident.

## VIII. Clarifications

### A. Consent

1. Consent means an active agreement to participate in sexual activity. An active agreement is words and/or conduct that communicate a person's willingness to participate. The following individuals cannot give valid Consent:
  - a. A person who is Incapacitated, if either the person claiming to have obtained Consent knows that the other person is Incapacitated or a reasonable person would know that the other person is Incapacitated;
  - b. A person who is Forced; or
  - c. A person who is under the age of eighteen (18), unless the person giving Consent is at least the age of thirteen (13) and the other person is less than four (4) years older than the person giving Consent.
2. During a sexual encounter, each person has responsibility for obtaining Consent from the other person. During an investigation, the institution has the burden of obtaining evidence whether Sexual Misconduct occurred without Consent. During any hearing, the institution has the burden of proving that Sexual Misconduct occurred without Consent. (In other words, it is not a Respondent's burden to prove Consent during an investigation or hearing). Whether a person has communicated Consent generally is evaluated from the perspective of what a reasonable person who perceived the individual's words and/or nonverbal conduct would have understood; however, in the context of a relationship that has involved sexual activity and a pattern of communicating Consent, whether Consent has been communicated may be evaluated based on a subjective standard (i.e., what did the specific person who initiated the sexual activity conclude based on the pattern of communication?).
3. A verbal “no” ( or words equivalent to “no”) or the nonverbal communication of “no,” even if it sounds or appears insincere or indecisive, means that Consent has not been communicated, or if previously communicated, has been withdrawn. The absence of a verbal “no” or the absence of a nonverbal communication of “no” does not necessarily mean that Consent has been communicated.
4. Consent must exist from the beginning to the end of each sexual encounter and for each sexual act that occurs during a sexual encounter. A person has a right to change

their mind; thus, Consent may be withdrawn at any time. A withdrawal of Consent is communicated through clear words and/or conduct that indicate that a person no longer agrees to participate in sexual activity. Once a person's withdrawal of Consent has been communicated, the other person must cease the sexual act for which Consent was withdrawn and must obtain Consent before reinitiating that sexual act. Consent is automatically withdrawn when a person becomes incapacitated or is forced to participate in sexual activity.

5. Consent to one type of sexual activity (e.g., oral sex) does not constitute or imply Consent for another type of sexual activity (e.g., vaginal intercourse), whether during a sexual encounter or based on a previous sexual encounter.
6. The following do not communicate a person's willingness to participate in sexual activity:
  - a. Silence, unless accompanied by non-verbal conduct conveying a willingness to participate in sexual activity;
  - b. Consent communicated by the person on a previous occasion;
  - c. Consent communicated to a third person;
  - d. The person's failure to resist physical force (however, for purposes of the Policy, the person's resistance to physical force will be viewed as a clear demonstration that the person has not communicated Consent);
  - e. A current or previous dating, romantic, intimate, or sexual relationship with the other person;
  - f. Currently or previously cohabitating with the other person;
  - g. The person's attire, reputation, giving or acceptance of gifts, sexual arousal, or extension or acceptance of an invitation to go to a private residence, room, or other location.
  - h. One's own use of alcohol, drugs, or other substances does not diminish one's responsibility to obtain Consent from the other person. Another person's use of alcohol, drugs, or other substances does not diminish one's responsibility to obtain Consent from that person.

**B. Force**

1. Force includes physical force (such as pushing, hitting, pinning down), threats (direct or indirect expressions of intent to inflict harm to self or others), intimidation (implied or indirect threats), and/or other forms of coercion. To coerce

is to attempt to cause another person to act or think in a certain way by use of force, pressure, threats, or intimidation; to compel is to coerce.

### C. Incapacitation

1. A person violates this policy when they engage in sexual activity with another person who is incapacitated under circumstances in which a reasonable person would have known the other person to be Incapacitated. For evaluating Incapacitation, a “reasonable person” means a sober, objectively reasonable person in the same situation, with ordinary sensitivities, and with similar identities as the Respondent.
2. Incapacitation can be voluntary or involuntary. Signs of Incapacitation may include, without limitation: sleep; total or intermittent unconsciousness; lack of control over physical movements (e.g., inability to dress/undress without assistance; inability to walk without assistance); lack of awareness of circumstances or surroundings; emotional volatility; combativeness; vomiting; incontinence; unresponsiveness; and inability to communicate coherently. Incapacitation is an individualized determination based on the totality of the circumstances.
3. Blacking out is an amnesia-like state that may be brought on by drugs, heavy drinking, or intoxication; blacking out is not necessarily incompatible with the ability to engage in simple or even complex behavior. After blacking out, a person has no recollection of all or part of the events that occurred during the blackout. There is a distinction between passing out (falling asleep or becoming unconscious) due to drug or alcohol use and blacking out in that a person in a blackout remains conscious and operative.
4. Incapacitation or Incapacitated means a person’s inability, temporarily or permanently, to communicate a willingness to participate in an activity (e.g., sexual activity) because of mental or physical helplessness, sleep, unconsciousness, or other lack of awareness that the activity is taking place. Incapacitation can be voluntary or involuntary. Signs of Incapacitation may include, without limitation: sleep; total or intermittent unconsciousness; lack of control over physical movements (e.g., inability to dress/undress without assistance; inability to walk without assistance); lack of awareness of



circumstances or surroundings; emotional volatility; combativeness; vomiting; incontinence; unresponsiveness; and inability to communicate coherently. Incapacitation is an individualized determination based on the totality of the circumstances. Alcohol and drugs (including “date rape” drugs) are common causes of Incapacitation. When alcohol or drugs are involved, Incapacitation is a state beyond mere drunkenness or intoxication.

D. Severe and Pervasive

1. Severe and Pervasive. Severe means behavior that is more than antagonistic, non-consensual, and crass, even where the behavior is based on differences in sex or gender. Pervasive means systemic or widespread, and it necessarily involves more than one incident of sexual harassment. Sources: *Kollaritsch v. Michigan State Board of Trustees*, 944 F.3d 613, 620-21 (6<sup>th</sup> Cir. 2019) (citing *Davis v. Monroe County Board of Educ.*, 526 U.S. 629, 651-53 (1999)); *Doe v. Univ. of Kentucky*, 959 F.3d 246, 250 (6<sup>th</sup> Cir. 2020).

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**Sources**

**Authority**

T.C.A. § 49-8-203; All State and Federal Statutes, Acts, Codes, Rules and Regulations referenced in this policy.

**History**

NEW Policy approved at Board Meeting, September 26, 2014; REVISED Policy approved at Board Meeting, August 12, 2020

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**Related Policies**

- [Sex Discrimination, Sexual Harassment or Sexual Misconduct](#)
- [Sexual Misconduct](#)
- [Discrimination & Harassment - Complaint & Investigation Procedure](#)
- [Equal Employment Opportunity and Affirmative Action](#)

# Equal Employment Opportunity and Affirmative Action: 5.01.02.00

## Policy Area

Personnel Policies

## Applicable Divisions

TCATs, Community Colleges, System Office

## Purpose

The purpose of this policy is to set the standards for a consistent process and treatment of employees regarding equal employment opportunity and affirmative action across the TBR system.

## Policy

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### III. Administrative Responsibility

- A. Duties of the Chancellor and/or System Equal Employment Opportunity and Affirmative Action Program Officer.

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- 2. The Chancellor shall direct the President of each institution to appoint an EEO/AA Officer and a Title IX Coordinator for the institution. If the EEO/AA Officer and Title IX Coordinator are different people, then the President shall be responsible for ensuring that the Title IX Coordinator and EEO/AA Officer work together to comply with statutes, regulations, policies, and guidelines, including, but not limited to, the duties assigned to the EEO/AA Officer in this policy.

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2. The institution or system Office EEO/AA Officer/Title IX Coordinator will investigate and resolve all complaints of unlawful harassment as required by applicable policy and/or directed by Guideline P-080 and will consult the Office of General Counsel for legal advice.

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1. Resolution of Harassment Complaints

~~1. The Chancellor and the Board have designated the institution or System Office EEO/AA Officer as the coordinator and investigator of all harassment complaints. The process outlined in Guideline P-080 will be followed. The President/Chancellor will ensure that the EEO/AA Officer investigates the complaint. The final report on the harassment complaint will go from the EEO/AA Officer to the President/Chancellor for action and the final resolution will be made by that individual.~~

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B. **Duties of the President**

1. Each institution President shall be responsible for the development and implementation of the equal employment opportunity and affirmative action program on each campus as well as assuring that unlawful harassment is investigated and educational efforts regarding harassment take place. In carrying out this responsibility, the President shall comply with the following:
  - a. Appoint an EEO/AA Officer who will be responsible for promoting and assuring compliance with this policy and with all applicable EEO laws,

regulations, policies, and guidelines ~~receiving and investigating complaints pursuant to the process set forth in TBR Guideline P-080~~, reviewing the effectiveness of the program and recommending improvements to the President.

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C. Duties of the EEO/AA Officer

1. Equal Employment Opportunity and Affirmative Action Program

- a. The EEO/AA Officer will develop and maintain an EEO/AA program which shall include but not be limited to the following responsibilities:
  - i. The institution/System Office EEO/AA Officer will receive, review and investigate equal employment opportunity complaints and appeals and make recommendations to the President or Chancellor regarding their disposition, unless policy or guideline requires otherwise.

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# Sex Discrimination, Sexual Harassment or Sexual Misconduct: 6.01.00.00

## Policy Area

Sexual Discrimination/Harassment/Misconduct

## Applicable Divisions

TCATs, Community Colleges, System Office

## Purpose

It is the intent of the Tennessee Board of Regents that the institutions under its jurisdiction shall fully comply with Title IX of the Education Amendments of 1972, §485(f) of the HEA, as amended by §304 of the Violence Against Women Reauthorization Act of 2013, the regulations implementing these Acts found at 34 CFR §668.41, §668.46, and Appendix A to Subpart D of Part 668; and Sections 799A and 845 of the Public Health Service Act and Regulations issued pursuant thereto found at 45 CFR Parts 83 and 86. The policies in this area are adopted to address such compliance.

## Definitions

For purposes of this policy area the following definitions shall apply:

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- Sexual Harassment is **unwelcome** conduct based on a person's sex, sexual orientation or gender identity/expression that:

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- **Some sexual harassment can also meet the definition of sexual misconduct.**
- Sexual Misconduct for purposes of this policy area includes dating violence, domestic violence, sexual assault, **and** stalking, **and Title IX sexual harassment** as they are defined in Policy 6.03.00.00.

# Sex Discrimination and Sexual Harassment:

## 6.02.00.00

### Policy Area

Sexual Discrimination/Harassment/Misconduct

### Applicable Divisions

TCATs, Community Colleges, System Office

### Purpose

It is the intent of the Tennessee Board of Regents that the institutions under its jurisdiction shall fully comply with Title IX of the Education Amendments of 1972, Sections 799A and 845 of the Public Health Service Act and Regulations issued pursuant thereto (45 C.F.R. Parts 83 and 86). The following policy and procedures are adopted by the Board to assist the institutions in such compliance.

### Policy

#### c. Procedures

1. Designation of Title IX Coordinator ~~Responsible Employee~~.
  - a. Each institution shall designate at least one employee to be the Title IX Coordinator and to ~~who will~~ coordinate the efforts of the institution to comply with the acts and the regulations.
  - b. The Title IX Coordinator ~~designated employee or employees~~ should have sufficient time and ability to evaluate the compliance efforts of the institution, ~~coordinate such efforts~~, and investigate complaints by employees or students arising under the Acts and the Regulations.
  - c. The name of the Title IX Coordinator ~~designated employee or employees~~ of each institution should be submitted to the Chancellor or designee.

2. Complaint Procedures.

- a. Each institution's policy shall direct Students and employees reports and complaints of sex discrimination, including sexual harassment, to the Title IX Coordinator, by mail, telephone, or electronic mail, using the contact information listed for the Title IX Coordinator. Contact information, including name, mailing address, email address, and telephone number, shall be posted prominently on the institution's website. ~~shall utilize the complaint and investigation procedure set forth in TBR Guideline P-080 Discrimination and Harassment- Complaint and Investigation Procedure (or the institution's corresponding policy) when filing complaints arising under the Acts or the Regulations.~~

3. Statement and Dissemination of Policy.

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- b. The policy statement shall include the name, **and mailing address, email address, and telephone number for the Title IX Coordinator.** ~~address of the employee or employees designated pursuant to Section III. A. 1., to whom inquiries concerning the application of the above Act or the Regulations adopted pursuant thereto may be directed.~~

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- d. ~~The policy statement adopted pursuant to section 1. of this item shall be published in the following publications:~~

- ~~1. Local newspapers;~~
- ~~2. Newspapers and magazines operated by the institution or by student or alumni groups; and~~

~~3. Memoranda or written communications to every student and employee of the institution.~~

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**e. Recordkeeping**

a. The Title IX Coordinator shall retain for a period of seven years the following documents:

i. For each sexual harassment investigation, whether pursuant to Board Policy No. 6.03.00.00, Sexual Misconduct; TBR Guideline P-080; or otherwise:

1. the investigation file, which includes any record an institution creates to investigate an allegation, regardless of later dismissal or other resolution, as well as all information required by applicable policy and guidelines;
2. any determination regarding responsibility;
3. any audio or audiovisual recording or transcript;
4. any disciplinary action;
5. any remedies provided to restore or preserve equal access to an education program or activity;
6. any appeal and result; and
7. any informal resolution and result.

ii. All materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process about their



obligations under the Sexual Misconduct Policy, which shall be available on the institution's website.

iii. For each report, whether formal or informal, of sexual misconduct as defined by the Sexual Misconduct Policy, where no investigation was conducted, documentation of:

1. Records of any actions taken in response, including any interim or supportive measures;
2. Documentation of the basis for the institution's conclusion that its response was not deliberately indifferent;
3. Any measures taken to restore or preserve equal access to an institutional education program or activity; and
4. If an institution does not provide a complainant with supportive measures, documentation as to why the institution's response was not clearly unreasonable in light of known circumstances (e.g., the complainant did not wish to receive supportive measures or refused to discuss them with the Title IX Coordinator).

# Development & Operation of Off-Campus International Educational Programs:

## 2.08.10.00

### Policy/Guideline Area

Academic Policies

### Applicable Divisions

TCATs, Community Colleges

### Purpose

The Tennessee Board of Regents will provide students with opportunities to earn postsecondary credit and non-credit service and internship experiences at off-campus international sites.

### Definitions

- Tennessee Consortium for International Studies (TnCIS) - TnCIS represents nineteen colleges and universities devoted to making international education and cultural understanding a central goal of higher education throughout the state of Tennessee. TnCIS welcomes membership from all colleges, universities and other organizations seeking to expand opportunities for international educational exchanges.

### Policy/Guideline

#### 1. Policy

The Tennessee Board of Regents System (TBR) supports off-campus international educational programs, service, internship or courses as a valid and valuable part of undergraduate education. The TBR encourages all TBR institutions to engage in international opportunities that meet the legitimate academic needs of their students and in cooperation with consortia both internal to the TBR system in which TBR institutions hold membership and those external to the system.

### Procedures

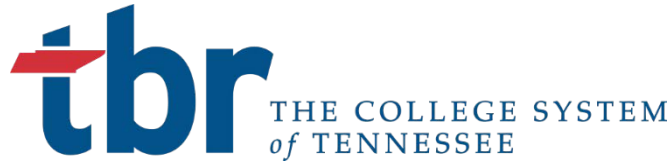
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## VI. Safety, Welfare, and Student Conduct

### L. Conduct and Discipline Issues

1. **Unless a policy indicates that it does not apply outside the U.S.,** Institutional policies regarding student conduct apply to TBR students registered for credit regardless of their attendance at one of the TBR campuses in Tennessee or while participating in international opportunities.

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BOARD TRANSMITTAL

MEETING: August 12, 2020

SUBJECT: Approval of NEW TBR Policy 7:03:00:00:  
Infectious Disease

DATE: July 28, 2020

PRESENTER: Dr. Heidi Leming

PRESENTATION REQUIREMENT: None

ACTION REQUIRED: ROLL CALL VOTE

STAFF'S RECOMMENDATION: Approve

Summary:

This policy establishes standards and procedures for community and technical colleges governed by the Tennessee Board of Regents. TBR requires that all colleges develop an infectious disease policy consistent with the provisions of this policy and include it in its catalog or other appropriate publications.

The policy has previously been reviewed by academic and student affairs and approved by the President's Council with suggested revisions from those groups already included.

## **Policy Area**

Safety and Security Policies

7.03.00.00

## **Infectious Disease**

### **Purpose**

This Policy is intended to provide guidance to Tennessee Board of Regents (TBR) institutions seeking to implement policies, procedures, and/or plans designed to prevent the spread or outbreak of infectious and/or communicable diseases and will be interpreted and administered in order to protect the health, safety and well-being of the College community.

### **Applies To**

Community Colleges; Colleges of Applied Technology

### **Definitions**

Blood borne pathogens – Infectious microorganisms in human blood that can cause disease in humans, which include, but are not limited to, Hepatitis B Virus (HBV), Human Immunodeficiency Virus (HIV), and other infectious blood borne diseases.

Communicable Disease - An illness due to an infectious agent or its toxic products which is transmitted directly or indirectly to a well person from an infected person or animal, or through the agency of an intermediate animal host, vector, or inanimate environment.

Infectious Disease - A disease, e.g. influenza, malaria, meningitis, rabies, or tetanus, caused by the entrance into the body of pathogenic agents or microorganisms, e.g. bacteria, viruses, protozoans, or fungi, which arises through transmission of that disease agent from one individual to others, either directly or indirectly. Examples of infectious diseases include but are not limited to the diseases listed below and can include other diseases as may be identified by the Centers for Disease Control (CDC), the Tennessee Department of Health, County Health Departments, or other public health authorities:

Bloodborne Pathogens	Diarrheal Diseases	Hepatitis
Viruses	Measles	Pediculosis
Scabies	Varicella	Conjunctivitis
Diphtheria	Herpes Simplex	Meningococcal infections
Pertussis	Streptococcal infections	Zoster
Cytomegalovirus infections	Enteroviral infections	Human Immunodeficiency Virus
Mumps	Rubella	Tuberculosis

Quarantine - A mandatory or voluntary separation and/or restriction of the movement of people have been, or are reasonably suspected to have been, exposed to an infectious/communicable disease to see if they become sick.

Isolation – A mandatory or voluntary separation of sick people diagnosed with an infectious/communicable disease from people who are not sick.

Personal Protective Equipment (PPE) – Equipment worn to minimize exposure to hazards from contact with infectious/communicable disease, chemical, radiological, physical, electrical, mechanical, or other workplace hazards. Personal protective equipment may include items such as gloves, safety glasses and shoes, earplugs or muffs, hard hats, respirators, or coveralls, vests, and full body suits.

**Policy**

1. TBR Institutions will comply with all Federal and State laws, Executive Orders, Rules, Regulations, and Guidance from Public Health Agencies/Authorities applicable to outbreaks of infectious and/or communicable diseases. This policy authorizes TBR institutions to enact policies, procedures, and/or plans to facilitate compliance with such laws, orders, and guidance, for the purpose of making best efforts to prevent the spread of infectious/communicable diseases within the campus community.

2. College employees, students, and other persons entering the premises of any TBR institution shall be required to comply with all policies, procedures, and/or plans established relating to the control of an outbreak of infectious/communicable diseases. Implementation and enforcement of policies, procedures, and/or plans promulgated in response to an outbreak of an infectious or communicable disease shall be enforced with the primary goal of achieving compliance with the applicable policy or plan. Removal from campus or discipline of individuals who are not compliant with the institution's policy or plan is authorized as necessary after efforts at obtaining compliance have been exhausted or as health, safety, and security require.

### **Procedure**

- I. Infectious/Communicable Disease Plans
  - A. During certain communicable disease outbreaks such as a large epidemic or pandemic, TBR institutions may be required, or may find it appropriate, to develop and implement a plan or procedure to comply with laws, orders or directives issued by government or public health officials to address and/or curtail such outbreaks. In developing such plans/procedures, TBR institutions shall do so in a manner that is consistent with applicable lawful orders issued by government authorities and guidance from public health authorities including, but not limited to, the CDC, federal, state and local public health agencies. When creating such plan/procedure, TBR institutions shall also take care to comply with all applicable state and federal laws, including but not limited to, the Americans with Disabilities Act (ADA), Section 504 of the Rehabilitation Act of 1973, the Age Discrimination in Employment Act (ADEA), and/or all laws governing/prohibiting unlawful discrimination. TBR institutions shall consult with the TBR Office of General Counsel (OGC) to ensure that any policy or plan promulgated in response to an outbreak of an infectious or communicable disease is compliant with such laws.

B. During an outbreak of an infectious/communicable disease, and consistent with guidance from appropriate health authorities, TBR Institutions may take steps to identify and address potential actions or protocols that are appropriate given, the nature and circumstances associated with a particular outbreak/disease, including but not limited to the following:

1. Implementation of health screening protocols as a precondition to entry onto/into any campus or facility owned or controlled by a TBR institution, consistent with guidance or directives from local, state, or federal authorities.
2. Implementation of health safety protocols as a requirement of permitted presence for persons entering any campus or facility owned or controlled by a TBR institution, consistent with guidance or directives from local, state, or federal authorities. (E.g., wearing a mask or PPE to prevent shedding/spread of a virus.)
3. Establishment of requirements requiring individuals who travel to and from countries with active communicable disease outbreaks to report such travel and quarantine and/or isolate for established periods of time prior to entry/return to any campus/facility owned or controlled by the institution.
4. Restrict business related travel to high-risk locations.
5. Require individuals seeking to return to any campus or facility after any period of travel, to self-quarantine, or isolate and to provide evidence of testing, screening(s) or other information from a treating medical professional, that the individual is free from, or not likely to transmit, a particular infectious/communicable disease consistent with public health/medical guidance, as permitted by law, prior to returning to any campus/facility.



6. Require individuals seeking to return to any campus or facility after any period of quarantine or isolation related to a diagnosis or exposure to an infectious/communicable disease to provide evidence of testing, screening(s) or other information from a treating medical professional, that the individual is free from or not medically likely to transmit a particular infectious/communicable disease at issue consistent with public health/medical guidance and as permitted by law, prior to returning to any campus/facility.
7. Inquire about any symptoms recently experienced, consistent with an infectious/communicable disease, by any individual seeking to enter campus.
8. Require an individual to submit to an appropriate medical evaluation from a physician of the College's choosing at the College's expense prior to entering any campus or facility.
9. Consult with an individual's physician (with appropriate consent) regarding the health of any individual relative to an infectious/communicable disease, prior to entering any campus or facility.
10. Consult with public health authorities and/or other qualified persons or resources, to assist in determining any appropriate course of action.
11. Exclude individuals from any campus/facility who are infected with, or have been exposed to, an infectious/communicable disease from any campus, facility, or activity. Employees will be subject to the College's policies, procedures and other requirements for requesting/receiving benefits and leaves of absence.
12. Offer accommodations to employees and students who are displaced from their regularly scheduled College events and/or activities due to an infectious/communicable disease.
13. Activate College Emergency Operations to consider measures such as social distancing, College closure, cleaning procedures, travel monitoring, class suspension, use of PPE, etc.

14. Implement other temporary action(s) that is/are reasonably required to prevent unacceptable risk of introduction or exposure of an infectious or communicable disease to a TBR institution's campus or community, until the College is able to consult with a physician or local, state or federal authorities.

15. Establish alternate work plans and/or education delivery plans.

16. Implement all health/safety requirements imposed by federal, state, and/or local authorities as applicable to members of the college community.

C. The primary focus of an institution's infectious/communicable disease plan shall be maintain and protect the health and safety of the campus community.

D. An institution's infectious/communicable disease plan should permit, to the extent reasonably possible, students who are impacted by an infectious/communicable disease to continue to participate in an educational program. An institution's infectious/communicable disease plan should permit, to the extent reasonably possible, employees who are impacted by an infectious/communicable disease to continue to work, as long as an employee is able to perform the essential functions of the job satisfactorily. The College will consider making reasonable accommodations for impacted students and employees consistent with applicable federal, state, and local laws as well as guidance from public health authorities. Discrimination against and/or harassment of employees and/or students impacted by an infectious/communicable disease is prohibited and may result in disciplinary action.

E. Health care workers, personal service workers, and food service workers employed by the College will be expected to follow guidelines issued by the Centers for Disease Control and protocols at Affiliate sites for the prevention of transmission of infectious/communicable diseases. The College will make educational materials on infectious, communicable diseases available for students and employees.

## **II. Responsibilities**

### **A. General**

1. Through the President and/or designee, the Institutional Administration will develop procedures and regulations concerning the outbreak of infectious, communicable, and/or life-threatening diseases that are appropriate to the particular circumstances and guidance, and consistent with this policy. The President and/or designee should include individuals with appropriate authority over essential functions of the College as well as persons with relevant medical/health education/experience in the process to develop procedures and/or regulations responsive to the outbreak of an infectious/communicable disease. Such procedures and/or regulations will be published to the institutional community as appropriate. In meeting its compliance obligations TBR institutions will prioritize, in descending order:

- a. Health and Safety of the Campus and Surrounding Community,
- b. Continuity of Education Mission for Students,
- c. Minimized Disruption of Employment for Faculty & Staff

### **B. Environmental Health & Safety**

1. Plans will require the appropriate Vice President(s) or designees to coordinate environmental health & safety, police/security, custodial, and maintenance services personnel to ensure that procedures, regulations, and appropriate precautions are implemented to minimize the risk of introduction, exposure, and/or spread of infectious/communicable and/or life-threatening diseases. This will include special attention to custodial, public safety and other employees and students with increased likelihood of exposure to the infectious/communicable diseases.

### **C. Internal Communication of Procedures**

1. Plans will include the requirement that the appropriate Vice President(s), Chief Human Resources Officer(s) or designees will ensure education and outreach programs are developed to provide employees and students with appropriate factual material regarding relevant disease protocols and precautions.

2. Plans should ensure that clear guidance is provided about the referral of questions about infectious/communicable diseases or life-threatening illnesses to the appropriate Vice President, Chief Human Resources Officer, designee, or the institution's Employee Assistance Program.

#### D. Response to Notifications

1. Infectious/Communicable disease plans should provide for the response to information acquired by the institution regarding any individual present on an institution's campus who is/has been diagnosed, infected, or exposed to an infectious/communicable disease. The plan will provide for the President and/or designee(s) to recommend medically reasonable efforts/action to confirm, assess, and respond to the reasonably anticipated risk to the campus community and communication with the appropriate health department authorities as required. Responsibilities will also include the confirmation of reports of infectious/communicable diseases impacting the institutions/campus/community.

#### E. External Communications

1. Infectious/Communicable disease plans should provide that decisions concerning official communications with external stakeholders will be disseminated from the President's or other designated office. TBR institutions will follow Tennessee Department of Health guidance for reporting occurrences to appropriate health authorities.

## F. Confidentiality

1. Infectious/Communicable disease plans shall provide that TBR institutions will maintain confidentiality of medical information received and will not disclose the identity of any individual who has been infected, diagnosed or exposed to an infectious/communicable disease, except to individuals with a need to know or as may be permitted or required by law, absent consent from the affected individual.
2. College employees will be informed that they are to take reasonable precautions to comply with confidentiality obligations, e.g. FERPA, ADA, FMLA, HIPAA, and/or state confidentiality laws. An employee, other than the affected employee or student, who inappropriately releases confidential medical information shall be subject to disciplinary action, which may include termination of employment. In certain situations, specific government reporting requirements or a medical justification may necessitate the disclosure of health information, and nothing in this policy shall be construed to prohibit disclosure of health information consistent with mandatory and permissive disclosure laws and obligations.

### **Source**

#### **Authority**

T.C.A. § 49-8-203,

#### **History**

September 23, 2020 Board approved new policy

### **Related**

Any related policy or procedure.

**Exhibits**

Any attachments to the policy – Exhibit # and name. Include exhibits in transmittal to legal only.