

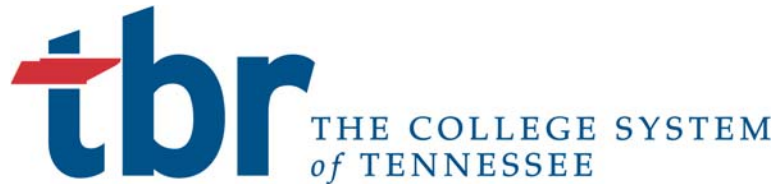
Presidents Quarterly Meeting Agenda

Wednesday, March 3, 2021

1. Opening Remarks – Chancellor Tydings
2. Accessibility Audit and Timeline for 2021 – Heidi Leming
3. Admission at the Community Colleges: 2.03.00.00 (attached) – Heidi Leming
4. Proposed Rules (attached) – Brian Lapps

Consent Agenda:

- a. Student Conduct and Disciplinary Standards (clean and redline)
 - b. Title IX/Sexual Misconduct Rule
 - c. Sexual Misconduct Policy revisions (redline only)
 - d. Programs for Minors on Campus Policy
 - e. Contested Case Hearing Rule
5. Programs for Minors on Campus Policy: 7.04.00.00 (attached) – Brian Lapps
 6. Legislative Update – Kim McCormick
 7. Fall Scheduling - Russ Deaton
 8. Diversity, Equity, and Inclusion Initiatives – Wendy Thompson
 9. Other Business and Adjournment



**Presidents Virtual Meeting
Wednesday, March 3, 2021**

SUBJECT POLICY NUMBER: Approval of REVISIONS to TBR Policy 2.03.00.00:
Admission at the Community Colleges

PRESENTER: Dr. Heidi Leming, Vice Chancellor for Student Success

ACTION REQUIRED: Requires Vote

Summary:

It is the intent of this suggested amendment to TBR Policy to ensure consistent compliance with Tennessee law by setting a maximum threshold for which an institution may require proof of high school graduation for admission purposes. It is not the intent to prevent an institution from setting a lower threshold for waiving proof of high school graduation for transfer applicants. This amendment in no way impacts the admission requirements specified in 2.03.00.00 Section II.B

The policy has previously been reviewed by the admissions and records working group members. It was approved by the Academic and Student Affairs Subcouncil on February 3 – 4, 2021.

Admission at the Community Colleges: 2.03.00.00

Policy/Guideline Area

Academic Policies

Applicable Divisions

Community Colleges

Purpose

This policy establishes admissions standards for community colleges governed by the Tennessee Board of Regents (TBR). This policy establishes admissions standards for community colleges governed by the Tennessee Board of Regents (TBR).

Definitions

- Adequate coverage - adequate coverage shall mean that the student's coverage meets or exceeds the level of coverage provided to participants in the TBR's Student/Scholar Health & Accident Insurance Plan.
- Ability to Benefit (ATB)- The Department of Education established criteria, through a provision of the Higher Education Act, that must be met by a person who does not have either a regular high school diploma, General Education Diploma (GED), or High School Equivalency Test (HiSET) Exam to receive federal financial aid.

Policy/Guideline

I. Provisions for Community Colleges

A. Policy Development

1. The Tennessee Board of Regents requires that all community colleges shall develop an admission policy consistent with the provisions of this policy and Section 504 of the Rehabilitation Act of 1973 (Non-discrimination on the Basis of Handicap) and the Americans with Disabilities Act of 1990 and submit it to the Tennessee Board of Regents for approval.

2. Each institution shall include its approved admission policy in its catalog or other appropriate publications.
3. Dual Enrollment admissions policies shall be developed in compliance with TBR Policy Early Postsecondary Opportunities 2.01.00.05 and T.C.A. § 49-6-3111.

B. Policy Revision

1. Any subsequent change to an approved admission policy shall, prior to implementation, be submitted to the Tennessee Board of Regents for review and approval.

C. Medical or Health Information

1. Each institution shall comply with Rules promulgated by the Board of Regents regarding requirements for immunization against certain diseases prior to attendance at a system institution.
2. A copy of Board of Regents promulgated rules is Exhibit 1 to this policy.

Procedures

I. **General Provisions**

A. Admission of Non-Tennessee Residents

1. Each community college may establish minimum criteria for the admission of residents of states other than Tennessee, which exceed the minimum criteria established for residents of the State.

B. Residency Classification

1. Each community college shall, in the admission or readmission process, assign each student a residency classification using TBR Policy No. 3.05.01.00 Regulations for Classifying Students In-State and Out-of-State for the Purposes of Paying College.

C. Admission of International Non-Immigrant Applicants

1. Each community college must establish policies and procedures for the admission of international non-immigrant applicants in accordance with the following criteria:
 - a. Educational Level. The educational level attained must be comparable to that required of U.S. applicants.
 - b. Proof of English Language Proficiency for Non-Native English Language Speakers. In order to determine an applicant's level of proficiency in the English language, each and community college shall require that applicants whose native language is not English submit scores earned on the Test of English Language Proficiency (TOEFL), the academic version of the International English Language Testing System (IELTS), or one of the other recognized comparable standardized examinations or through a standardized examination developed at the individual institution. Courses completed at another U.S. institution may be used in lieu of standardized examination scores.
 - c. Financial Statement. In order to determine the international student's ability to pay registration fees, non-resident fees, living and other expenses, each institution shall require international applicant to supply evidence of financial capability.
 - d. Immigration Service Regulations. Institutions must adhere to all U.S. Citizenship and Immigration Service regulations in the admission, enrollment, and readmission of international non-immigrant applicants.
 - e. Certification of Freedom from Tuberculosis. All international non-immigrant students applying for admission pursuant to a student visa shall submit within thirty (30) days from the first day of classes a certificate from a licensed physician or other qualified medical authority verifying freedom from tuberculosis. Failure to submit such certification shall result in denial of admission or continued enrollment. In the event

that a student has tuberculosis or has potential tuberculosis requiring medical treatment, continued enrollment will be conditioned upon the determination by a licensed physician that further enrollment is not a risk to others and upon the student's compliance with any prescribed medical treatment program.

- f. Medical and Hospitalization Insurance. Each institution must require that international non-immigrant applicants with J, F, or M visas have and maintain medical and hospitalization insurance as a condition of admission and continued enrollment at the institution. Applicants with J visas must also carry adequate medical and hospitalization insurance for spouses and dependents. Institutions may require similar insurance coverage of all other international non-immigrant applicants.

2. Institutions shall establish this requirement in policy and shall establish a process for:
 - a. Informing applicants for admission of the coverage required and of its approximate cost of coverage and options for accessing insurance;
 - b. Informing applicants of the documents that will be acceptable as proof of medical and hospitalization coverage; and
 - c. Automatically enrolling in the TBR recommended insurance plan those international non-immigrant students who do not otherwise have adequate coverage. Enrollment shall take place not later than at the time of class registration, and the cost of the coverage shall be added to the student's registration fees.

D. Admission to Specialized or Limited-Enrollment Programs

1. Each community college shall develop specific policy and procedures for admission of students to programs or courses with enrollment limitations and/or specialized curricula.

2. Such limitations should be based upon selective criteria appropriate to the program or course which apply equally to all prospective students, provided that preference for admission be given to residents of the State of Tennessee. (Incorporates former TBR Policy No. 2.03.00.05 - see TBR Meeting September 30, 1983)
 3. A number of factors such as accreditation and professional certification standards, limited clinical and classroom space, faculty availability, and a concern for appropriate student progress influence the selective admissions process to certain undergraduate programs.
 - a. Students must meet the application criteria, be reviewed and accepted for admission, and make satisfactory progress to be admitted and continue in these academic programs.
 - b. Institutions may vary in their admission requirements based on their analysis of student success characteristics.
 - c. Admission and progression policies related to selective programs should reflect the likelihood of being admitted to the academic program at the earliest possible point and contain information on grade point average, standardized test scores, and grade expectations in specified high school courses indicative of success in the field.
 4. Admission and progression policies should be clearly displayed in all materials to prospective applicants.
- E. Admission under Ability to Benefit (ATB)
1. For institutions wishing to participate in the ATB option under Title IV, students must meet the minimum criteria as outlined by the U.S. Department of Education.
 2. ATB allows students to apply for Federal Financial Aid by proving their “ability to benefit” from college, either by taking a test or completing six college credits before placement on ATB.

3. Institutions which have established ATB processes and procedures must maintain documentation that the programs in which students enroll are Title IV eligible and must offer students on ATB the opportunity to also earn a high school credential.

F. Admission to Medical, Nursing, and Allied Health Programs

1. Each community college that offers medical, nursing, or allied health programs shall require that all persons admitted to such programs:
 - a. Provide evidence through a health verification form, that at a minimum, establish the applicant's compliance with the Rules promulgated by the Tennessee Department of Health regarding requirements for immunization against certain diseases, including the Hepatitis B vaccine, and other communicable diseases.
 - b. Be, with reasonable accommodation, physically and mentally capable of performing the essential functions of the program as defined in writing by the institution.

G. Readmission

1. Each community college shall develop policies and procedures for the readmission of students.
2. Readmission policies and procedures for students not in good academic standing shall be consistent with TBR Policy No. 2.03.01.01 (Undergraduate Academic Retention Standards).

H. Application Fee

1. TBR institutions are prohibited from charging an application fee.

II. [Community College Degree Admission](#)

A. Admission of First-Time Freshmen

1. Applicants for degree admission as first-time freshmen must be admitted using the following criteria:

Deleted: Except for those that are exempt per T.C.A. § 49-7-110 (2) a

- a. High School Graduation. Applicants for degree admission as first-time freshmen must provide an official transcript showing graduation from high school unless otherwise exempted.
- b. High School Diploma, other State Recognized Equivalency
 1. Effective January 1, 2014, applicants for degree admission as first-time freshmen may present either the 2014 GED ® test or the HiSET® in lieu of a high school diploma provided that their GED ® test or the HiSET® score meets or exceeds the minimum score set by the institution.
- c. Standardized Examination Scores
 1. Community colleges will not use standardized scores for admission purposes, but may use them for advisement purposes as well as a component in the placement decision in accordance with TBR Learning Support Policy No. 2.03.00.02.
- d. High School Course Requirements
 1. Admission will be granted to freshmen applicants who hold a recognized high school diploma that includes a distribution of college preparatory courses, such as those required in the core elements of the Tennessee High School Diploma.
 2. Applicants who graduated prior to the adoption of the Tennessee Diploma Project curriculum by the TBR who hold a high school diploma are exempt from the diploma requirements with the exception of those in T.C.A. § 49-7-110.
 3. Admission will be granted for students who submit a high school diploma from a church-related school or home school as defined by T.C.A. § 49-50-801 and T.C.A. § 49-6-3050.
 1. Church-Related or Home School students who do not present valid ACT, SAT, or other approved assessment scores at time of

admissions may be subject to program assessments to determine program eligibility consistent with TBR Learning Support Policy No. 2.03.00.02.

e. Out-of-State Applicants

1. Applicants who are residents of states other than Tennessee are subject to the same admission requirements as in-state applicants.

B. Admission of Transfer Students

1. Each community college shall establish policy and procedures for the admission of transfer students that are consistent with the TBR Policy 2.01.00.00 General Education & Degree Requirements, Sections II and III, TBR Learning Support Policy No. 2.03.00.02. and with the following criteria:
 - a. The applicant must provide official transcripts of credits attempted from all institutions of higher education previously attended.
 - b. If the student has earned an associate degree or higher from a postsecondary institution accredited by an agency recognized by the U.S. Department of Education, Community Colleges shall not require an applicant to provide the institution with a copy of the applicant's high school transcript, or HiSET/GED certificate showing proof of a passing score, as a part of the institution's admission process.**
 - c. The applicant's grade point average on transferable courses must be at least equal to that which the institution requires for the readmission of its own students. Applicants who do not meet the institution's standards may be admitted on scholastic probation or other appropriate condition.
 - d. Institutions must develop policy and publish criteria regarding the awarding of transfer consistent with TBR Policy 2.01.00.04 Awarding of Credits Earned Through Extra-Institutional Learning to Community

Colleges and Universities and TBR Policy 2.03.01.01 Undergraduate Academic Retention Standards.

1. Institutions may determine a subset if grade point average is used to determine admission to selective programs.
- C. Non-Degree Admission for Community College Applicants
1. Each community college shall develop policy and procedures for admitting applicants who wish to take credit courses, but who either do not qualify for or do not wish to apply for degree admission.
 2. Policies shall include any conditions of enrollment and any term or overall credit-hour limitations.
- D. Audit and No-Credit Admission
1. Each community college shall develop policy and procedures for the admission of persons wishing only to audit courses or to take credit courses on a no-credit basis. The following provisions shall apply:
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Admission at the Community Colleges: 2.03.00.00

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D. Audit and No-Credit Admission

1. Each community college shall develop policy and procedures for the admission of persons wishing only to audit courses or to take credit courses on a no-credit basis. The following provisions shall apply:
 - a. Admission may be limited or denied based on the availability of space in the individual classroom.

**Presidents Virtual Meeting
Wednesday, March 3, 2021**

SUBJECT POLICY NUMBER: Approval of Four New Rules; Revised Sexual Misconduct Policy

PRESENTER: Brian Lapps, General Counsel

ACTION REQUIRED: Requires Vote

BACKGROUND REGARDING RULES

As previously discussed, the General Assembly enacted statutory changes that, generally speaking, (1) require state agencies to use the rulemaking process more often, thereby decreasing state agencies' ability to implement policies without going through the formal rulemaking process and (2) decrease the ability of campuses to implement policies that are different from any applicable rule, either by changing the substance of the rule, changing the procedures established by the rule, or by creating additional substantive or procedural requirements that are not in the rule. Customization of the rule for the campus policy, e.g., inserting campus specific offices, titles, and contact information is permitted. Other minor revisions may also be acceptable. The goal in drafting these rules is to comply with the law while retaining as much flexibility as possible.

RULEMAKING PROCESS

TBR will soon be requesting an informal review of these proposed rules by members of the Joint Government Operations Committee in the General Assembly. TBR will then need to obtain review by the Attorney General's Office. Following publication by the Secretary of State, the Board of Regents will need to hold a rulemaking hearing, address any comments that might be made about the proposed rules, and then vote on the rules. Before becoming effective, the rules will formally be reviewed by the Joint Government Operations Committee. Upon becoming final, TBR policies will be amended to conform to the rules, and campuses will need to model institutional policies on the revised TBR policies. In other words, there are many steps to this process.

DISCUSSION OF PROPOSED RULES AND REVISIONS TO SEXUAL MISCONDUCT POLICY

1. *Procedures for Conducting Hearings in Accordance with the Contested Case Provisions of the Uniform Administrative Procedures Act, Chapter 0240-01-05.*

This is a new chapter to replace existing TBR Policy 1.06.00.05. The current policy needs to be a rule in order to defend the results of a contested case hearing. TBR will use the formal processes of the Administrative Procedures Division (APD) in the Secretary of State's Office. The actual process of the hearing will still be similar to the current, but rarely used, processes under the TBR policy. The major change is that TBR will typically use administrative judges from APD to preside over contested cases.

2. *Parking and Traffic, Chapter 0240-01-06.*

This is a new chapter. The current parking and traffic rules are contained in Chapter 0240-02-03, Student Conduct and Disciplinary Procedures. Because the proposed rules apply to the general public, and not just students, TBR seeks to create a new chapter of general applicability. These proposed rules provide more detail and specificity than the current rules, but similar to what the University of Memphis has enacted, [0240-10-04.20200520.pdf \(tnsosfiles.com\)](#), they do not provide as much procedural detail as the student conduct and disciplinary procedures rules.

3. *Student Conduct and Disciplinary Procedures, Chapter 0240-02-03.*

The attached chapter tracks the proposed changes against the current rules. The proposed revisions seek to introduce more detail and specificity, both substantively and procedurally, into the current rules. The proposed rules also remove the ability for institutions to make substantive alterations or additions to the rules.

4. *Title IX Compliance, Chapter 0240-02-10;*
Revisions to Sexual Misconduct Policy, TBR 6.03.00.00.

This is a new chapter. The rule is based on the TBR Sexual Misconduct policy and is designed to require as few changes as possible to that policy. Although the rule looks very different than the policy, that is largely due to formatting requirements. Minimal changes to the Sexual Misconduct Policy will be needed, as demonstrated by the tracked changes version.

These rules and the policy revisions have been reviewed by the Student Affairs Subcouncil.

Rules of
The Tennessee Board of Regents
State University and Community College System of Tennessee

Chapter 0240-01-05
Procedures for Conducting Hearings in Accordance With the Contested Case Provisions of the
Uniform Administrative Procedures Act

New Chapter

Table of Contents is added to Chapter 0240-01-05 and shall read as follows:

0240-01-05-.01 Contested Case Procedures

0240-01-05-.01 is added to Chapter 0240-01-05 and shall read as follows:

0240-01-05-.01 Contested Case Procedures

- (1) This Chapter outlines the procedures that the Tennessee Board of Regents (the TBR) and institutions under the authority of the TBR shall use to conduct hearings in contested cases under the Uniform Administrative Procedures Act, Tennessee Code Annotated §§ 4-5-101 et seq (the UAPA). Contested cases are proceedings in which the legal rights, duties, or privileges of a student, employee, or other individual are required by any statute or constitutional provision to be determined only after that individual or entity has been provided an opportunity for a hearing.
- (2) Applicability – TBR will apply the contested case provisions of the UAPA to:
 - (a) The suspension or expulsion of students who elect and properly request to pursue a UAPA hearing instead of another hearing option provided by TBR rules; and
 - (b) Any case where a contested case hearing is properly requested and required by law.
- (3) Administrative Judges and Hearing Officers
 - (a) In any case where a UAPA contested case hearing is elected and properly requested, the president (or chancellor for cases arising out of the TBR System Office) or designee may make a request to the office of the secretary of state to have the contested case heard by an administrative judge or hearing officer employed in the office of the secretary of state.
 - (b) In lieu of asking the secretary of state to have the contested case heard by an administrative judge or hearing officer employed in the office of the secretary of state, the president (or chancellor for cases arising out of the TBR System Office) or designee may determine, in his or her sole discretion, whether the hearing shall be held before:
 1. A person who is licensed to practice law and who is not employed as an attorney for a TBR institution;
 2. A former state, county, or municipal judge or a former federal judge or magistrate;
 3. An employee of the institution who has been trained to conduct contested cases, but who does not provide legal representation to the institution; or

4. An employee of another public institution who has been trained to conduct contested cases.
 - (c) Any administrative judge or hearing officer who hears a case involving sexual harassment, sexual assault, domestic violence, dating violence, or stalking shall receive training as required by federal and/or state law.
- (4) Procedures - The Tennessee Department of State's Uniform Rules of Procedures for Hearing Contested Cases before State Administrative Agencies, Tennessee Department of State Rule Chapter 1360-04-01, shall be used for contested case hearings under this rule.

Authority: T.C.A §§ 49-8-203 and 49-7-167. Administrative History: Original rule filed _____, 2021; effective _____, 2021.

Rules of
The Tennessee Board of Regents
State University and Community College System of Tennessee

Chapter 0240-01-06
Parking and Traffic Rules

New Chapter

Table of Contents is added to Chapter 0240-01-06 and shall read as follows:

0240-01-06-.01 Definitions
0240-01-06-.02 General Provisions
0240-01-06-.03 Registration
0240-01-06-.04 Parking Zones
0240-01-06-.05 Motor Vehicle Operation
0240-01-06-.06 Violations
0240-01-06-.07 Fines
0240-01-06-.08 Enforcement
0240-01-06-.09 Appeals

0240-01-06-.01 Definitions is added to Chapter 0240-01-06 and shall read as follows:

0240-01-06-.01 Definitions

- (1) The term “motor vehicle” means any self-propelled vehicle that is capable of exceeding twenty- five (25) miles per hour.

Authority: T.C.A. § 49-8-203(a)(1)(D). Administrative History: Original rules filed _____, 2021; effective _____, 2021.

0240-01-06-.02 General Provisions is added to Chapter 0240-01-06 and shall read as follows:

0240-01-06-.02 General Provisions

- (1) The purpose of these rules is to facilitate and regulate the safety and orderly operation of institutions under the control of the Tennessee Board of Regents (the TBR) and to provide parking facilities for their operation within the limits of available space.
- (2) Institutions shall identify an administrative unit or administrator responsible for implementation and enforcement of these rules.
- (3) Any person operating a motor vehicle on the property of a TBR institution is required to obey these rules as a condition of parking or operating a motor vehicle on campus.
- (4) The issuance of a parking permit does not guarantee a parking space. The inability to locate a marked parking space does not diminish the responsibility to park in accordance with these rules.
- (5) The absence of “no parking” signs or painted curbs/lines does not imply that parking is allowed. Parking in designated lots is restricted to marked spaces only. Motor vehicles parked outside of marked spaces are subject to citation and towing, and the owner/operator may be subject to disciplinary or administrative action.
- (6) The institution shall have no responsibility for theft or damage to any motor vehicle or its contents

operated or parked on institutional property.

- (7) These rules are enforceable seven (7) days a week, twenty-four (24) hours a day, including holidays and breaks.

Authority: T.C.A. § 49-8-203(a)(1)(D). Administrative History: Original rules filed _____, 2021; _____, 2021.

0240-01-06-.03 Registration is added to Chapter 0240-01-06 and shall read as follows:

0240-01-06-.03 Registration

- (1) Institutions may require students, employees, and visitors to register motor vehicles and/or obtain parking permits in order to park on campus. Reasonable costs/fees may be assessed in association with the motor vehicle registration or permit process. Any fees or costs associated with registration of motor vehicles, together with appropriate information sufficient to justify the fee/cost amount, shall be submitted for review and approval by the RTBR prior to implementation at any institution.
- (2) Institutions choosing to utilize parking permits shall identify locations where parking permits are available for pickup and purchase by students, visitors, and employees. Lost or stolen parking permits must be reported to the institution.
- (3) If the institution utilizes parking permits, only motor vehicles properly displaying a parking permit, visitor pass, or those motor vehicles legally parked where no permit is required may be parked on institutional property.
- (4) Parking permit holders are only eligible for one (1) parking permit at a time. Permits may be moved from one motor vehicle to another. Parking permits may not be transferred.

Authority: T.C.A. § 49-8-203(a)(1)(D). Administrative History: Original rules filed _____, 2021; _____, 2021.

0240-01-06-.04 Parking Zones is added to Chapter 0240-01-06 and shall read as follows:

0240-01-06-.04 Parking Zones

- (1) Institutions shall clearly designate lots for which parking permits are required and the types of permits required for such lots.
- (2) Persons utilizing disabled parking spaces must have a state-issued disability license plate or disability placard. All students, faculty, and staff who have a state-issued placard or license plate should be registered with the institution to ensure access to the appropriate disabled parking spaces on campus.
- (3) Motorcycles, motor bikes, and motor scooters must display a motorcycle permit (if issued by the institution) and are only permitted to park in spaces designated as "motorcycle parking" or in other regularly marked parking spaces. Operating these motor vehicles on any surface other than designated streets or parking areas is prohibited.

Authority: T.C.A. § 49-8-203(a)(1)(D). Administrative History: Original rules filed _____, 2021, _____, 2021.

0240-01-06-.05 Motor Vehicle Operation is added to Chapter 0240-01-06 and shall read as follows:

0240-01-06-.05 Motor Vehicle Operation

- (1) Operators of motor vehicles on campus property or in the campus area, which includes city streets running through campus, must obey all traffic rules, regulations, postings, and directions of law enforcement, regardless of whether the rule, regulation, posting, or direction is included in these rules, and all applicable traffic rules, regulations, postings, or directions.
- (2) Violations of posted speed limits, the reckless operation of a motor vehicle on campus, including but not limited to, squealing tires or sliding the motor vehicle.
- (3) All persons operating motor vehicles are responsible for maintaining proper control of the motor vehicle, safe operation, and observance of traffic control signs, barriers and devices.
- (4) Operating a motor vehicle in any area other than a street or a roadway intended for motor vehicles is prohibited.
- (5) Pedestrians have the right of way at established pedestrian crossings, except where regulated by traffic control lights or police officers.
- (6) Individuals riding bicycles must comply with all applicable traffic rules, regulations, postings, or directions.

Authority: T.C.A. § 49-8-203(a)(1)(D). Administrative History: Original rules filed _____, 2021; _____, 2021.

0240-01-06-.06 Violations is added to Chapter 0240-01-06 and shall read as follows:

0240-01-06-.06 Violations. The following are non-exclusive examples of violations of these rules.

- (1) Registration
 - (a) Unauthorized possession of a parking permit;
 - (b) Falsification of registration information; and
 - (c) Illegal use, unauthorized use, reproduction or alteration of a parking permit or temporary parking permit.
- (2) Parking
 - (a) In a no parking zone;
 - (b) No permit or visitor pass;
 - (c) Improper display of permit or visitor pass;
 - (d) Parked outside of lines or appropriately marked space;
 - (e) In such a manner as to block or obstruct traffic, street, sidewalk, driveway, fire hydrant, building entrance or exit, or another motor vehicle;
 - (f) In a fire lane;
 - (g) Parked overtime in a metered space;
 - (h) Illegal entry/exit in an access-controlled or gated parking facility, which includes, but is not limited to, tailgating another motor vehicle;

- (i) Non-operative vehicle parked on campus for longer than seven (7) days without permission from the institution;
- (j) Breaking the gate in an access-controlled gated parking facility; and
- (k) Disability parking violation, as defined by State law (including, but not limited to, unauthorized use of a disabled parking space, ramp, plate, or placard; parking a motor vehicle so that a portion of the motor vehicle encroaches into a disabled space in a manner that restricts, or reasonably could restrict, a person confined to a wheelchair from exiting or entering a motor vehicle properly parked within a disabled parking space). Fines for violating the disables parking laws cannot be suspended or waived where prohibited by T.C.A. § 55-21-108.

(3) Campus police officers may issue citations for violations of these rules, city county ordinances, and/or state laws. Individuals who receive a citation for violations of city or county ordinances and/or state laws must appear in court on the court date listed on the citation or pay the citation fine if appearance in court is not required.

Authority: T.C.A. § 49-8-203(a)(1)(D). Administrative History: Original rules filed _____, 2021; effective _____, 2021.

0240-01-06-.07 Fines is added to Chapter 0240-01-06 and shall read as follows:

0240-01-06-.07 Fines

- (1) Fines may be set as determined by each institution but shall not exceed the amounts set by any state law, or any county or municipal ordinance in the institution's jurisdiction for the same offense. Such fines must receive prior review and approval by the Chancellor. Proposed fines shall be submitted to the Chancellor together with information sufficient to justify the fine. Such information shall include consideration of state/county/municipal fines for the same offense, fines for the same offense at similarly situated institutions, association to enforcement costs at the institution, and/or the unique parking and traffic considerations at each institution. Once adopted or amended, all fines shall be affirmatively communicated to the faculty, staff, and students of the institution through its website.

Authority: T.C.A. § 49-8-203(a)(1)(D). Administrative History: Original rules filed _____, 2020; _____, 2020.

0240-01-06-.08 Enforcement is added to Chapter 0240-01-06 and shall read as follows:

0240-01-06-.08 Enforcement

- (1) Any student, employee, or visitor who has received a campus-issued citation may appeal the citation within fifteen (15) business days of the date of issuance. Citations issued by the institution and not appealed must be paid within fifteen (15) business days of the issuance date of the citation.
- (2) An institution, without advance notice, may tow, boot, or remove to a place of storage at the owner's expense any motor vehicle that is parked in a fire lane, designated disabled parking space, spaces reserved for designated motor vehicles, or motor vehicles parked in such a manner as to impede the flow of traffic or disrupt the orderly affairs of the institution.
- (3) An institution may tow, boot, or remove to a place of storage at the owner's expense any motor vehicle that has unpaid parking citations as long as advance notice and an opportunity to contest has been given. Windshield notices and/or other methods of notification will be used to provide the operator of the motor vehicle with advance notice of the intent to tow and the operator's right to a contest.

- (4) An institution may revoke parking privileges for repeated and/or deliberate parking or moving violations.
- (5) Students with outstanding citations may not be permitted to receive grades, transcripts, or diplomas.
- (6) Any student who receives \$100.00 or more in traffic and/or parking violations on institutional property during any semester may be subject to disciplinary action in accordance with applicable rules.
- (7) Parking permits, if utilized, are issued to persons, not motor vehicles, and are required to be affixed to a motor vehicle. Permit holders are responsible for citations incurred with their permit. Persons will also be held liable for a violation incurred by a motor vehicle without a permit when that motor vehicle is reasonably shown to be associated with the person.

Authority: T.C.A. § 49-8-203(a)(1)(D). Administrative History: Original rules filed _____, 2021; effective _____, 2021.

0240-01-06-.09 Appeals is added to Chapter 0240-01-06 and shall read as follows:

0240-01-06-.09 Appeals

- (1) Any student who has received a campus-issued citation may appeal the citation to the committee responsible for hearing student appeals within fifteen (15) days of the issuance date of the citation. Each institution shall provide instructions for appeals on its website. Appeals may be filed in person or online. All decisions by the committee responsible for student appeals are final.
- (2) Any employee who has received a campus-issued citation may appeal the citation to the committee responsible for hearing employee appeals within fifteen (15) days of the issuance date of the citation. Each institution shall provide instructions for appeals on its website. Appeals may be filed in person or online. All decisions by the committee responsible for employee appeals are final.
- (3) Any person not affiliated with the institution who has received a campus-issued citation may appeal the citation within fifteen (15) days of the issuance date of the citation. Each institution shall provide instructions on its website for appeals and the name of the administrator responsible for resolving appeals. Appeals may be filed in person or online. All decisions by the administrator responsible for appeals by unaffiliated individuals are final.

Authority: T.C.A. § 49-8-203(a)(1)(D). Administrative History: Original rules filed _____, 2021; effective _____, 2021.

Rules of
The Tennessee Board of Regents
State University and Community College System of Tennessee

Systemwide Student Rules
Chapter- 0240-02-03
Student Conduct and Disciplinary Sanctions

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0240-02-03-.01 [Institutional Restatement of Rules](#)~~INSTITUTION POLICY STATEMENT~~

- (1) Students enrolled in postsecondary educational institutions are citizens of their civic communities as well as the academic community. As such they are expected to conduct themselves as law-abiding members of each community at all times. Admission to an institution of postsecondary education carries with it special privileges and imposes special responsibilities apart from those rights and duties enjoyed by non-students. In recognition of the special relationship that exists between the institution and the academic community which it seeks to serve, the Tennessee Board of Regents ("TBR" or "the Board") has authorized the presidents of the institutions ~~and directors of the colleges of applied technology~~ under its jurisdiction to take such action, [consistent with these rules and the institution's restatement of these rules](#), as may be necessary to maintain campus conditions and preserve the integrity of the institution and its educational environment.
- (2) Pursuant to this authorization and in fulfillment of its duties to provide a secure and stimulating atmosphere in which individual and academic pursuits may flourish, the TBR has developed the following ~~rules regulations, which are intended~~ to govern student conduct on the ~~several~~ campuses under its jurisdiction. ~~Each institution under the jurisdiction of the TBR is directed to publish an institutional restatement of these rules to students. to implement policies subject to, and consistent with, these regulations. In student discipline policies, each institution may supplement these regulations, subject to prior review and approval by the TBR Offices of General Counsel and Academic Affairs.~~ In addition, students are subject to all federal, state, and local laws and ordinances. ~~If a student's violation of such laws or ordinances also adversely affects the institution's pursuit of its educational objectives, the i~~Institutions may enforce ~~their own policies~~ [these rules](#) regardless of the status or outcome of any external proceedings instituted by other civil or criminal authorities. [Students are responsible for compliance with these rules.](#)
- (3) For the purpose of these ~~rules regulations~~, a "student" shall mean any person:
 - (a) who is admitted, [enrolled](#), and/or registered for study [\(including for non-credit classes\)](#) at a TBR institution for any academic period. This shall include ~~any period of time following admission and/or registration, but preceding the start of classes for any academic period.~~ ~~It will also include any period which~~ follows [the end of an academic period through the last day for registration for the succeeding academic period, and during any period while the](#)

student is under suspension from the institution;—

(b) "Student" shall also include any person subject to a period of suspension or removal from campus ~~as a sanction which results~~ from a finding of a violation of these ~~rules; policies and regulations governing student conduct.~~

(c) who engaged in academic misconduct as part of the application process; and/or

(d) who previously attended a TBR institution and who was found to have violated these rules during the time of enrollment.

(e) Unless explicitly provided otherwise in these rules, the term "student" shall also refer to a student organization.

~~(3) Students are responsible for compliance with the Rules of Student Conduct and with similar institutional policies at all times.~~

(4) Disciplinary action may be taken against a student for violation of these ~~rules policies and regulations which that~~ occurs on institutionally owned, leased or otherwise controlled property (including all streets, alleys, sidewalks, and public ways abutting such property), while participating in international or distance learning programs, and off campus when the conduct impairs, interferes with, or obstructs any institutional activity or the mission, processes, and functions of the institution. In the case of violations that occur off institutionally owned, leased, or controlled property, the institution will take into account whether the violation impairs, interferes with, or obstructs any institutional activity, or the mission, processes, and function of the institution, including, but not limited to, conduct that:

(a) occurs in connection with any institutional activity, including but not limited to, international, distance, online, or remote learning programs, athletics events and other extracurricular activities, clinical, internship, practicum, and similar activities;

(b) occurs while using institutional resources, such as computers and network systems;

(c) involves or affects another member of the TBR community; or

~~(5)(d)~~ poses a credible, serious threat to the health and safety of the TBR community.

(5) These ~~rules regulations, and related material incorporated herein by reference,~~ are applicable to student organizations as well as individual students. Whether a student organization will be held responsible for a violation of these rules by one or more of its members will be based on the following considerations: ~~Student organizations are subject to discipline for the conduct and actions of individual members of the organization while acting in their capacity as members of, or while attending or participating in any activity of, the organization.~~

(a) the violation is endorsed by the student organization or any of its officers. "Endorsed by" includes, but is not limited to, active or passive consent or support, having prior knowledge that the conduct was likely to occur, or helping to plan, advertise, or promote the conduct;

(b) the violation took place during the course of an activity paid for by the student organization or by members of the student organization to support the activity in question;

(c) the prohibited conduct occurred on property owned, controlled, rented, leased, or used by the student organization or any of its members for an organizational event;

(d) the prohibited conduct was related to initiation, admission into, affiliation with, or as a condition

for continued membership in the student organization; and

~~(6)(e)~~ one or more officers of the student organization had prior knowledge or reasonably should have known the prohibited conduct would likely take place.

(6) Confidentiality of Discipline Process. Subject to the exceptions provided pursuant to the Family Educational Rights and Privacy Act of 1974 (FERPA), 20 U.S.C. 1232g, and/or the Tennessee Open-Public Records Act, T.C.A. § 10-7-501 et seq. 50_4(a)(4), and/or other state and federal law, a student's disciplinary records and files are considered "educational records" and are confidential in accordance with the meaning of those Acts.

(7) Matters within the scope of Title IX of the Education Amendments of 1972 shall proceed in accordance with TBR Rule 240-02-10 and not these rules.

~~(7)~~

Authority: T.C.A. §§ 4-5-101 et seq. and 49-8-203. Administrative History: Repeal of all rules by Public Chapter 261; effective July 1, 1983. New rule filed April 28, 1983; effective July 13, 1983. Amendment filed August 28, 1984; effective November 13, 1984. Amendment filed November 12, 2008; effective March 30, 2009. Repeal and new rule filed August 10, 2011; effective January 29, 2012. Amendment filed August 18, 2015; effective November 15, 2015; Amendment filed _____; effective _____.

0240-02-03-.02 ~~Disciplinary~~DISCIPLINARY ~~Offenses~~FFENSES.

(1) ~~Institutional~~d~~Disciplinary~~ measures shall be imposed, ~~through appropriate due process procedures, according to these rules and the institution's restatement of these rules, procedures, and processes implementing these rules. Institutions shall use the standard of evidence contained in the Tennessee Uniform Administrative Procedures Act, T.C.A. § 4-5-101 et seq. (UAPA) and Department of State Rule 1360-04-01. for conduct which adversely affects the institution's pursuit of its educational objectives, which violates or shows a disregard for the rights of other members of the academic community, or which endangers property or persons on property owned or controlled by an institution.~~

(2) ~~Institutions shall adopt and publish a non-exclusive list, providing notice of offenses for which~~ ~~Both~~ students~~individuals~~ and student organizations may be subject to disciplinary action for the following disciplinary offenses identified in these rules: ~~The list may include any appropriate offense given the specific needs of the individual institution, subject to prior review and approval by the TBR Offices of General Counsel and Academic Affairs. Institutions are pre-authorized to implement any or all of the disciplinary offenses, in the form set forth immediately below, without need for prior review or approval by the TBR Offices of General Counsel and Academic Affairs:~~

(a) Threatening or Disruptive Conduct. Any conduct, threatened conduct, or attempted conduct that, which poses a threat to a person's the safety, health, or personal well-being, including, but not limited to, endangering the health, safety, or welfare of any person; engaging in conduct that causes a reasonable person to fear harm to his or her health, safety or welfare; or making an oral or written statement that an objectively reasonable person hearing or reading the statement would interpret as a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals; of others or where the student's behavior is disruptive of the institution's learning environment;

~~(a)(b)~~ Disruptive Conduct. Any conduct, threatened conduct, or attempted conduct that is disruptive to the institution's learning environment, including, but not limited to, engaging in any action that interferes with the ability of the instructor to teach or other students to learn. Disruptive conduct in the classroom includes, but is not limited to, behavior that obstructs or disrupts the learning environment (e.g., offensive language, harassment of students and instructors, repeated outbursts from a student that disrupt the flow of instruction or prevent

concentration, failure to cooperate in maintaining classroom decorum, etc.), text messaging, and the continued use of any electronic or other noise or light emitting device which disturbs others;

~~(b)~~(c) Hazing. Hazing, as defined in T.C.A. § 49-7-123(a)(1), means any intentional or reckless act, on or off the property, of any higher education institution by an individual acting alone, or with others, which is directed against any other person(s) that endangers the mental or physical health or safety of that person(s), or which induces or coerces a person(s) to endanger such person(s) mental or physical health or safety. Hazing does not include customary athletic events or similar contests or competitions, and is limited to those actions taken and situations created in connection with initiation into or affiliation with any organization;

~~(e)~~(d) Disorderly Conduct. Any individual or group behavior which is abusive, obscene, lewd, indecent, (including, without limitation, public exposure of one's sex organs, public urinating, and public sexual acts), violent, excessively noisy, disorderly, or which unreasonably disturbs institutional functions, operations, classrooms, other groups or individuals;

~~(e)~~(e) Obstruction of or Interference with Institutional Activities or Facilities. Any intentional interference with or obstruction of any institutional program, event, or facility including the following:

1. Any unauthorized occupancy of facilities owned or controlled by an institution or blockage of access to or from such facilities;
2. Interference with the right of any institution member or other authorized person to gain access to any activity, program, event or facilities sponsored or controlled— by an institution;
3. Any obstruction or delay of a ~~campus~~ security officer, public safety officer, police officer, firefighter, EMT, or any official of an institution, or failure to comply with any emergency directive issued by such person in the performance of his or her duty;
4. Participation in a demonstration that substantially impedes institutional operations; or
- ~~3-5.~~ Obstruction of the free flow of pedestrian or vehicular traffic on property owned, leased or controlled by an institution or at an institutional activity.

~~(e)~~(f) Misuse of or Damage to Property. Any act of misuse, vandalism, malicious or unwarranted damage or destruction, defacing, disfiguring or unauthorized use of property belonging to the institution or a member of the TBR community—~~another~~ including, but not limited to, any personal property, fire alarms, fire equipment, elevators, telephones, institution keys, library materials and/or safety devices;

~~(f)~~(g) Theft, Misappropriation, or Unauthorized Sale of Property;

~~(g)~~(h) Misuse of Documents or Identification Cards. Any forgery, alteration of or unauthorized use of institutional documents, forms, records or identification cards, including the giving of any false information, or withholding of necessary information, in connection with a student's admission, enrollment or status in the institution;

~~(h)~~(i) ~~Firearms and Other Dangerous~~ Weapons. Possessing, carrying, using, storing, or manufacturing any weapon on institution controlled property or in connection with an institution affiliated activity, unless federal or state law provides a student with an affirmative right to possess or carry a weapon on institution controlled property or in connection with an

~~institution-affiliated activity; Any possession of or use of firearms, dangerous weapons of any kind, or replica/toy guns, e.g. BB guns, pellet guns, paintball guns, water guns, cap guns, toy knives or other items that simulate firearms or dangerous weapons;~~

~~(j)~~ (i) Explosives, Fireworks, ~~and~~ Flammable and Hazardous Materials. The unauthorized possession, ignition, or detonation of any object or article ~~which that represents a potential danger to the TBR community, including, but not limited to, explosives, fireworks, flammable materials, ammunition, hazardous liquids, chemicals, or hazardous materials; would cause damage by fire or other means to persons or property or possession of any substance which could be considered to be and used as fireworks;~~

~~(k)~~ (k) Alcoholic Beverages and Alcohol-Related Conduct. The use, ~~and/or~~ possession, distribution, or sale of alcoholic beverages on institution owned or controlled property or in connection with any institutional activity unless expressly permitted by the institution; ~~This offense includes the violation of any local ordinance, state, or federal law concerning alcoholic beverages, on or off institution owned or controlled property, where an affiliated group or organization has alcoholic beverages present and available for consumption;~~

~~(l)~~ (l) Drugs. The unlawful possession, ~~or use,~~ distribution, sale, or manufacture of any drug or controlled substance (including, but not limited to, any stimulant, depressant, narcotic or hallucinogenic drug, or marijuana), ~~sale or distribution of any such drug or controlled substance~~. This offense includes using or possessing a prescription drug if the prescription was not issued to the student, as well as the violation of any local ordinance, state, or federal law concerning the unlawful possession or use of drugs, ~~on or off institution owned or controlled property;~~

~~(m)~~ (m) Drug Paraphernalia. The use, ~~or~~ possession, distribution, sale, or manufacture of equipment, products or materials that are used or intended for use in manufacturing, growing, using or distributing any drug or controlled substance. This offense includes the violation of any local ordinance, state, or federal law concerning the unlawful possession of drug paraphernalia, ~~on or off institution owned or controlled property;~~

~~(n)~~ (n) Public Intoxication. Appearing on institution owned or controlled property or at an institutional sponsored event while under the influence of alcohol, a controlled substance or of any other intoxicating substance;

~~(o)~~ (o) Gambling. Unlawful gambling in any form;

~~(p)~~ (p) Financial Irresponsibility. Failure to meet financial responsibilities to the institution promptly including, but not limited to, knowingly passing a worthless check or money order in payment to the institution;

~~(q)~~ (q) Unacceptable Conduct Related to Disciplinary Proceedings. Any conduct at any stage of an institutional disciplinary proceeding or investigation that is contemptuous, disrespectful, threatening, retaliatory, or disorderly, including false complaints, false testimony or other falsification of evidence, and attempts to influence the impartiality of a member of an adjudicatory judicial body, verbal or physical harassment or intimidation of an institutional official, hearing panel, judicial board member, complainant, respondent, or witness;

~~(r)~~ (r) Failure to Cooperate with Institutional Officials. Failure to comply with reasonable directions of institutional officials acting in the performance of their duties; This includes, but is not limited to, failing to respond to a request to report to an institutional administrative office, failing to cooperate in an institutional investigation, failing to appear at an institutional hearing, including, without limitation, a disciplinary hearing;

~~(r) Violation of General Policies. Any violation of the general policies of the institution as published in an official institutional publication, including the intentional failure to perform any required action or the intentional performance of any prohibited action;~~

(s) Attempts, Aiding, and Abetting. Any attempt to commit any of the offenses listed under this section or the aiding or abetting of the commission of any of the offenses listed under this section (an attempt to commit an offense is defined as the intention to commit the offense coupled with the taking of some action toward its commission). Being present during the planning or commission of any offense listed under this section without having made an immediate report to the institution prior to the commission of the planned offense will be considered as aiding and abetting. Students who anticipate or observe an offense must remove themselves from the situation and are required to report the offense to the institution;

(t) Violations of State or Federal Laws. Any violation of state or federal laws, rules, or regulations prohibiting proscribing conduct or establishing offenses, ~~if a student's violation of such laws or regulations also adversely affects the institution's pursuit of its educational objectives;~~

(u) Violation of Imposed Disciplinary Sanctions. Intentional or unintentional violation of a disciplinary sanction officially imposed through an institutional disciplinary proceeding by an institution official or a constituted body of the institution;

(v) Sexual Misconduct. Committing any act of sexual assault, rape, sexual battery, domestic violence, or dating violence as defined by state or federal law;sexual misconduct as defined by TBR Policy 6:03:00:00;

(w) Harassment, Stalking, or Retaliation. Any conduct that falls within T.C.A. § 39-17-308 (Harassment) or T.C.A. § 39-17-315 (Stalking) or "student-on-student harassment," which means unwelcome conduct directed toward a person that is discriminatory on a basis prohibited by federal, state, or local law, and that is so severe, pervasive, and objectively offensive that it effectively bars the victim's access to educational opportunity or benefit. Engaging in "retaliation," which is an act or omission committed by a student because of another person's participation in a protected activity that would discourage a reasonable person from engaging in protected activity. Retaliation violates these standards regardless of whether the underlying allegation of a violation of a rule is ultimately found to have merit. Retaliation can include, without limitation: an act or omission committed against a person's family, friends, advisors, and or other persons reasonably expected to provide information in connection with an institutional investigation or hearing, and an act or omission committed by a student through a third party;Any act by an individual or group against another person or group in violation of TBR policies, as well as federal and/or state laws prohibiting discrimination, including, but not limited to, TBR policies 5:01:02:00,(F), 6:01:00:00, 6:02:00:00, and TBR Guideline P-080;

~~(w)(x)~~ Discrimination. Any conduct prohibited by any federal or state law, rule, or regulation related to discrimination, harassment, or retaliation;

~~(x)(y)~~ Academic Misconduct. Any action or attempted action designed to provide an unfair academic advantage or disadvantage for oneself or others. Academic misconduct includes a wide variety of behaviors such as Plagiarism, cheating, fabrication, and other academic dishonesty. For purposes of these rulesis section the following definitions apply:

1. Plagiarism. The adoption or reproduction of ideas, words, statements, images, or works of another person as one's own without proper attribution. Examples include copying of passages from works of others into one's own work without acknowledgment; summarizing or paraphrasing ideas from another source without proper attribution, unless such information is recognized as common knowledge; and using facts, statistics graphs,

representations or phrases without proper attribution;

2. Cheating. Using or attempting to use unauthorized materials, information, or aids in any academic exercise or test/examination. Examples include copying another's work; obtaining or giving unauthorized assistance; unauthorized collaboration or collusion with another person; having another person take a test for a student; and the use of unauthorized materials or devices. The term academic exercise includes all forms of work submitted for credit or hours; and
3. Fabrication. Falsifying, fabricating, or misrepresenting data, research results, citations or other information in connection with an academic assignment. Unauthorized falsification or invention of any information or citation -in an academic exercise.

~~(y)~~(z) Unauthorized Duplication or Possession of Keys. Making, causing to be made or the possession of, with the intent to use or make available for use by others, any key for an institutional facility without proper authorization;

~~(z)~~(aa) Litter. Dispersing litter in any form onto the grounds or facilities of the campus;

~~(aa)~~(bb) Pornography. Public display of literature, films, pictures or other materials which an average person applying contemporary community standards would find, (1) taken as a whole, appeals to the prurient interest, (2) depicts or describes sexual conduct in a patently offensive way, and (3) taken as a whole, lacks serious literary, artistic, political or scientific value;

~~(bb)~~(cc) Abuse of Computer Resources and Facilities. Misusing and/or abusing campus- computer resources including, but not limited to the following:

1. Use of another person's identification to gain access to institutional computer resources;
2. Use of institutional computer resources and facilities to violate copyright laws, including, but not limited to, the act of unauthorized distribution of copyrighted materials using institutional information technology systems;
3. Unauthorized access to a computer or network file, including but not limited to, altering, using, reading, copying, or deleting the file;
4. Unauthorized transfer of a computer or network file;
5. Use of computing resources and facilities to send abusive or obscene correspondence;
6. Use of computing resources and facilities in a manner that interferes with normal operation of the institutional computing system;
7. Use of computing resources and facilities to interfere with the work of another student, faculty member, or institutional official; and/or

~~8. —Violation of any published information technology resources policy,~~

~~9.8.~~ Unauthorized peer-to-peer file sharing;

~~(ee)~~(dd) Unauthorized Access to Institutional Facilities and/or Grounds. Any unauthorized access and/or occupancy of institutional facilities and grounds is prohibited, including, but not limited to, gaining access to facilities and grounds that are closed to the public, being present in areas of campus that are open to limited guests only, being present in academic buildings after hours without permission, and being present in buildings when the student has no legitimate reason

to be present;

~~(dd)~~(ee) Providing False Information. Giving any false information to, or withholding necessary information from, any institutional official acting in the performance of his/her duties in connection with a student's admission, enrollment, or status in the institution;

~~(ee)~~ (ff) Observation Without Consent Unauthorized Surveillance. Knowingly spying upon, observing, or otherwise viewing an individual, regardless of whether a photo, video, or recording is made, when the individual is in a place where there is reasonable expectation of privacy, without the prior effective consent of the individual, if the viewing would offend or embarrass an ordinary person if the person knew the person was being viewed. Making or causing to be made unauthorized video or photographic images of a person in a location in which that person has a reasonable expectation of privacy, without the prior effective consent of the individual, or in the case of a minor, without the prior effective consent of the minor's parent or guardian. This includes, but is not limited to, taking video or photographic images in ~~–~~shower/locker rooms, living quarters~~residence hall rooms~~, and ~~men's or women's~~ restrooms, and storing, sharing, and/or distributing of such unauthorized images by any means;

~~(ff)~~ (gg) Smoking Violations. ~~Violation of any TBR and/or institutional smoking or other tobacco use rules or policies.~~ Smoking or tobacco use in any campus building or facility, in any state-owned vehicle, or on any campus grounds or property, unless in a designated smoking or tobacco use area. For the purposes of these rules, "tobacco use" includes, but is not limited to, the personal use of any tobacco product, whether intended to be lit or not, which includes smoking tobacco or other substances that are lit and smoked, as well as the use of an electronic cigarette or any other device intended to simulate smoking and the use of smokeless tobacco, including snuff; chewing tobacco; smokeless pouches; any form of loose-leaf, smokeless tobacco; and the use of unlit cigarettes, cigars, and pipe tobacco;

(hh) Maintenance of Ethical and Professional Standards. Failure to maintain the high ethical and professional standards of the various disciplines of the health professions may subject a student to suspension from a program, dismissal from a program, or other appropriate remedial action.

1. A student enrolled in a program leading to a degree or certificate in a health profession is subject to disciplinary action up to and including suspension and dismissal from a program for engaging in the following acts of misconduct, regardless of location:

(i) Commission of an offense classified as a felony by Tennessee or federal criminal statutes;

(ii) Unlawful use, possession, or sale of drugs or narcotics, whether or not felonious;

(iii) Other unprofessional or unethical conduct that would bring disrepute and disgrace upon both the student and profession and that would tend to substantially reduce or eliminate the student's ability to effectively practice the profession in which discipline he or she is enrolled; or

(iv) Conduct that is in violation of either a relevant Tennessee statute establishing professional standards or a rule or regulation of a Tennessee regulatory board or other body responsible for the establishment and enforcement of professional standards.

2. A person applying for admission to a health profession program may be denied admission to the program on the basis of his or her violation of the aforementioned ethical and professional standards;

~~(3) Disciplinary action may be taken against a student for violations of the foregoing regulations or institutional policies which occur at or in association with enrollment at an institution governed by the TBR for any academic period. Each student shall be responsible for his/her conduct from the time of application for admission through the actual awarding of a degree including periods prior to or between semesters. Conduct occurring while a student is registered or enrolled at the institution, but not discovered until after the student leaves the institution, including after the awarding of a degree is actionable under these provisions and may result in the retroactive application of a disciplinary sanction. Should a student withdraw from the institution with disciplinary action or academic misconduct action pending, the student's record may be encumbered by the appropriate institutional office until the proceedings have been concluded.~~

~~(4)(3) Disciplinary holds.~~

~~(a) (a) An institution may place a hold on a student record when the student has:~~

- ~~1. Withdrawn from the institution while a disciplinary meeting and/or proceeding is pending;~~
- ~~2. Not responded to an institutional official's request for a meeting or hearing; or~~
- ~~3. Been suspended or expelled.~~

~~(b) (b) A disciplinary hold may remain on a student's record until final resolution of a disciplinary meeting and/or disciplinary hearing.~~

~~(c) (c) An institution will not confer a degree when a student record has been placed on hold, or when a student has a pending disciplinary meeting and/or disciplinary proceeding.~~

~~(4) Except for cases involving Academic Misconduct, an institution will not revoke a degree or credential based on conduct occurring while a person was a student, but not discovered until after the awarding of a degree or credential.~~

~~(5)~~

Authority: T.C.A. §§ 4-5-101 et seq., 49-7-123(a)(1) and 49-8-203. Administrative History: Repeal of all rules by the Public Chapter 261; effective July 1, 1983. New rule filed April 28, 1983; effective July 13, 1983. Amendment filed August 28, 1984; effective November 13, 1984. Amendment filed May 13, 1991; effective August 28, 1991. Amendment filed July 3, 1996; effective November 28, 1996. Amendment filed November 20, 1996; effective March 28, 1997. Amendment filed February 18, 1999; effective June 28, 1999. Amendment filed August 11, 2004; effective December 29, 2004. Amendments filed November 12, 2008; effective March 30, 2009. Repeal and new rule filed August 10, 2011; effective January 29, 2012. Emergency rule filed August 18, 2015; effective through February 14, 2016. Amendment filed August 18, 2015; effective November 15, 2015; Amendment filed _____; effective _____.

0240-02-03-03 ~~ACADEMIC AND CLASSROOM~~ Classroom and Academic Misconduct ~~MISCONDUCT.~~

(1) Classroom Misconduct

~~(a) The instructor has the primary responsibility for maintenance of academic integrity and controlling classroom behavior and responding to disruptive conduct.~~

~~Disruptive behavior in the classroom may be defined as, but not limited to, behavior that obstructs or disrupts the learning environment (e.g., offensive language, harassment of students and professors, repeated outbursts from a student which disrupt the flow of instruction or prevent concentration on the subject taught, failure to cooperate in maintaining classroom decorum, etc.), text messaging, and the continued use of any electronic or other noise or light emitting device which disturbs others.~~

~~(1)(b)~~ ~~(b)~~ The instructor and can may order the temporary removal or exclusion from the classroom of any student engaged in disruptive conduct or other conduct that violates these rules, ~~or policies of the institution,~~ for each class session during which the conduct occurs. Extended or permanent exclusion from the classroom, beyond the session in which the conduct occurred, or further disciplinary action can be effected only through appropriate procedures set forth in these rules of the institution.

(2) Academic Misconduct

~~(2)(a)~~ ~~(a)~~ Plagiarism, cheating, and other forms of Academic misconduct is dishonesty are prohibited. Students guilty of academic misconduct, either directly or indirectly, through participation or assistance, are immediately responsible to the instructor of the class. In addition to other possible disciplinary sanctions that may be imposed in accordance with these rules and institutional restatement of these rules, which may be imposed through the regular institutional disciplinary procedures, the instructor has the authority to take academic discipline consistent with these rules and institutional restatement of these rules, procedures, and processes. assign an appropriate grade for the exercise or examination, proportional to the nature and extent of academic misconduct. Disciplinary sanctions will be imposed only through the appropriate institutional student disciplinary processes.

~~(b)~~ An instructor who determines that a student has engaged in academic misconduct may choose to exercise academic discipline by lowering to any extent, including to a grade of "F" or "zero," a student's grade in the course, assignment, or examination affected by the alleged academic misconduct.

~~(c)~~ An instructor who initiates academic discipline shall inform the appropriate Chair and Dean (or other individual(s) identified by the institution) in writing of the finding of academic misconduct, the basis therefor, the academic discipline imposed, and the appeals process within five (5) days of the imposition of academic discipline.

~~(d)~~ A student may not withdraw from a course pending final resolution of an allegation of academic misconduct. Students are permitted and encouraged to continue attending class until the academic disciplinary decision, including all appeals, is final.

~~(e)(e)~~ A student charged with academic misconduct has the option of either accepting the academic discipline imposed by the instructor or initiating the appeals process to challenge the allegation of academic misconduct or the severity of the academic discipline. If the student does not respond in writing within five (5) days by either accepting or appealing the academic discipline to the institutional academic misconduct appeals committee, the student waives the right to contest the academic discipline, at which time it becomes final.

~~(f)~~ An institutional academic misconduct appeals committee shall consist of at least three (3) individuals and include at least one student. The chief academic officer or other administrator identified by the institution will assemble the committee and coordinate the hearing but will not participate on the committee. Any individual who has an interest in the incident, a conflict of interest, or a bias is not permitted to serve on the committee. An institution may maintain standing pools from which individuals may appointed and/or appoint ad hoc academic misconduct appeals committees. At a technical college the president has the authority to appoint a single administrator to perform the functions of the academic misconduct appeals committee and to effectuate the processes identified in this rule.

~~(g)~~ The academic misconduct appeals committee will set a hearing date that is within fifteen (15) business days of receipt of date of the student's appeal. The student must receive at least seven (7) calendar days' notice of the date, time, and location of the hearing. A student will

be notified of the due process protections provided for in TBR Rule 0240-02-03-.06.

(h) The academic misconduct appeals committee will conduct the appeal hearing, consider the evidence presented, and make a decision based on a simple majority vote using a preponderance of the evidence standard. The committee can either uphold, overturn, or lessen the academic discipline. The results of the committee's decision will be conveyed to the student in writing, through the chief academic officer or other individual identified by the institution, within ten (10) business days of the hearing.

(i) If the academic misconduct appeals committee upholds or lessens the academic discipline, the student may appeal in writing to the president within five (5) business days following receipt of the decision of the committee. The president will make a decision within ten (10) business days. The president's decision is final.

(j) The institution's chief academic officer, president, or other administrator identified by the institution has the ability to extend any deadline in this section for good cause and upon written notice to the student.

(k) In addition to academic discipline, a student who is found responsible for academic misconduct, either one or more times, may be subject to disciplinary sanctions in accordance with these rules.

(l) The institution shall maintain permanently all submissions by the student and all decisions of institutional officials and committees relating to academic misconduct.

~~(3) Students may appeal a grade assignment associated with a finding of academic misconduct, as distinct from a student disciplinary sanction, through appropriate institutional academic misconduct or grade appeal procedures. Courses may not be dropped pending the final resolution of an allegation of academic misconduct.~~

~~(4)(1) Disruptive behavior in the classroom may be defined as, but not limited to, behavior that obstructs or disrupts the learning environment (e.g., offensive language, harassment of students and professors, repeated outbursts from a student which disrupt the flow of instruction or prevent concentration on the subject taught, failure to cooperate in maintaining classroom decorum, etc.), text messaging, and the continued use of any electronic or other noise or light emitting device which disturbs others.~~

Authority: T.C.A. §§ 4-5-101 et seq. and 49-8-203. Administrative History: Repeal of all rules by Public Chapter 261; effective July 1, 1983. New rule filed April 28, 1983; effective July 13, 1983. Amendment filed August 28, 1984; effective November 13, 1984. Amendment filed August 11, 2004; effective December 29, 2004. Repeal and new rule filed August 10, 2011; effective January 29, 2012. Amendment filed August 18, 2015; effective November 15, 2015; Amendment filed _____; effective _____.

0240-02-03-.04 Disciplinary Sanctions~~DISCIPLINARY SANCTIONS.~~

(1) Institutions shall ~~adopt and~~ publish a policy ~~these rules and~~, providing notice of potential disciplinary sanctions applicable to both students individuals and student organizations. Disciplinary sanctions may be imposed only after a violation of these rules has been established. ~~The policy may include any appropriate sanction, given the specific needs of the individual institution, subject to prior review and approval by the TBR Offices of General Counsel and Academic Affairs. Institutions are pre-authorized to implement any or all of the sanctions, in the form set forth in sub-section (2) below, without need for prior review or approval. Upon a determination that a student or student organization has violated any of the disciplinary offenses set forth in these regulations, institutional disciplinary policies, or the general policies of an institution, d~~Disciplinary sanctions may be imposed, either singly or in combination, ~~by the appropriate institution or school officials.~~

(2) ~~Types~~Definition of Sanctions:

- (a) Restitution. Restitution may be required in situations which involve ~~theft~~, destruction, damage, or loss of property, or unreimbursed medical expenses resulting from physical injury. When restitution is required, the student or student organization is obligated by the appropriate ~~institutional judicial~~ authority to compensate a party or parties for a loss suffered as a result of disciplinary violation(s). ~~This action may take the form of appropriate service, monetary compensation, or material replacement.~~ Any ~~monetary~~ such payment in restitution shall be limited to actual cost of repair, replacement or financial loss;
- (b) Warning. The appropriate institutional official may notify ~~orally or in writing~~ the student or student organization that continuation or repetition of specified conduct may be cause for other disciplinary action;
- (c) Reprimand. A written or verbal reprimand or censure may be given to any student or student organization whose conduct violates any part of these ~~rules~~ regulations and provides notice that any further violation(s) may result in more serious penalties;
- (d) Service to the Institution or Community. A student, or student organization, may be required to donate a specified number of service hours to the institution performing reasonable tasks for an appropriate institution office, official(s), or the local community. The service required shall be commensurate to the offense (e.g., service for maintenance staff for defacing institutional property);
- (e) Specified Educational/Counseling Program. A student or student organization may be required to participate in specified educational or counseling program(s) relevant to the offense, or to prepare a project or report concerning a relevant topic;

~~(f) Apology. A student or student organization may be required to apologize to an affected party, either verbally or in writing, for the behavior related to a disciplinary offense;~~

~~(g) Fines. Penalties in the form of fines may be imposed against a student or student organization whenever the appropriate institutional authority deems appropriate. The sanction of fines may be imposed in addition to other forms of disciplinary sanctions. Failure to pay fines may result in further disciplinary action;~~

~~(f)~~ Restriction. A restriction upon a student's or student organization's privileges for a period of time may be imposed. This restriction may include, for example, denial of the ability to represent the institution at any event, ability to participate in institution or TBR sponsored travel, use of facilities, parking privileges, participation in extracurricular activities or restriction of organizational privileges;

~~(f)~~ Probation. Continued enrollment of a student or recognition of a student organization on probation may be conditioned upon adherence to these ~~rules~~ regulations. Any student or organization placed on probation will be notified in writing of the terms and length of the probation. Probation may include restrictions upon extracurricular activities, or any other appropriate special condition(s). Any conduct in further violation of these ~~rules~~ regulations while on probationary status or the failure to comply with the terms of the probationary period may result in the imposition of further disciplinary action;

~~(f)~~ Suspension. Suspension is the separation of a student or student organization from the institution for a specified period of time. Suspension may be accompanied by special conditions for readmission or recognition;

~~(k)~~(i) Expulsion. Expulsion entails a permanent separation from the institution. The imposition of this sanction is a permanent bar to the student's admission, or a student organization's recognition by the institution. A student or organization that has been expelled may not enter institution property or facilities without obtaining prior approval from an appropriate campus official with knowledge of the expulsion directive;

~~(j)~~(i) Revocation and Withholding of Admission, Degree, or Credential; and

~~(m)~~(k) Interim Involuntary Withdrawal or Suspension. As a general rule, the status of a student or student organization accused of violation of these rules/regulations or institutional policies should not be altered until a final determination has been made in regard to the charges. However, interim or involuntary withdrawal or suspension, pending the completion of disciplinary procedures, may be imposed upon a finding by the appropriate institutional official that the conduct, or attempted conduct of the student poses a direct threat to the safety of any other member of the institution, its guests, property, or the student's behavior is materially and substantially disruptive of the institution's learning environment, or other campus activities. In any case of interim or involuntary withdrawal or suspension, the student, or student organization, shall be given an opportunity at the time of the decision, or as soon thereafter as reasonably possible, to contest the suspension in accordance with these rules.;

~~(n) — Housing Probation. Continued residence in campus or student housing may be conditioned upon adherence to these regulations as well as institutional housing policies. Any resident placed on housing probation will be notified in writing of the terms and length of the probation. Probation may include restrictions upon the activities of the resident, including any other appropriate special condition(s);~~

~~— Housing Suspension and Forfeiture. A resident suspended from housing may not reside, visit, or make any use whatsoever of a housing facility or participate in any housing activity during the period for which the sanction is in effect. A suspended resident shall be required to forfeit housing fees (including any unused portion thereof and the Housing Deposit). A suspended resident must vacate the housing unit. Housing suspension shall remain a part of the student resident's disciplinary record.~~

~~(o)~~(3) (3) — The president is authorized, either personally or through a designee, to negotiate a mutually acceptable resolution to any disciplinary proceeding or to rescind or convert any sanction imposed to a lesser sanction.

Authority: T.C.A. §§ 4-5-101 et seq. and 49-8-203. Administrative History: Repeal of all rules by Public Chapter 261; effective July 1, 1983. New rule filed April 28, 1983; effective July 13, 1983. Amendment filed August 28, 1984; effective November 13, 1984. Amendment filed August 11, 2004; effective December 29, 2004. Amendments filed November 12, 2008; effective March 30, 2009. Repeal and new rule filed August 10, 2011; effective January 29, 2012. Emergency rule filed August 18, 2015; effective through February 14, 2016. Amendment filed August 18, 2015; effective November 15, 2015; Amendment filed _____; effective _____.

0240-02-03-.05 TRAFFIC AND PARKING-Repealed

~~(1) — General: Institutions governed by the TBR shall adopt institutional policies governing traffic and parking on their respective campuses. The purpose of these policies shall be to facilitate the orderly and efficient flow of traffic on those campuses, to provide a safe atmosphere for both pedestrians and motor vehicle operators, and to provide order with regard to parking within limited space. Institutional policies enacted in compliance with this rule shall be subject to prior review and approval of the TBR. Once adopted, such policies shall be published, at least annually, and, as appropriate, through signage, traffic/parking handbooks, student/faculty handbooks and institutional websites.~~

- ~~(2) Registration of Automobiles/Permits/Decals: TBR institutions shall adopt policies regarding the registration of vehicles and/or the issuance of decals and/or permits on campus, and/or the alternate use of campus access fees in lieu of registration of individual vehicles for the purpose of effective enforcement of campus traffic and/or parking regulations. Reasonable fees/costs may be assessed in association with the vehicle registration, permit, or decal issuance process. Any fees/costs associated with registration of vehicles or the issuance of permits/decals, together with appropriate information sufficient to justify the fee/cost amount, shall be submitted for review and approval by the TBR prior to implementation at any institution, pursuant to the requirement set forth in TBR policy.~~
- ~~(3) Parking: TBR institutions shall adopt policies with regard to parking on institution owned, operated, or controlled sites. Those policies shall reflect the physical availability and limitations of parking facilities at institution owned, operated, or controlled sites. TBR institutions are further authorized to adopt appropriate parking zones or designated parking systems for faculty, staff, students, residents of campus housing, visitors, and other appropriate groups. Institutions may also establish a schedule of hours for enforcement for parking regulations at their various campus sites. Reasonable fees/costs may be assessed in association with the issuance of parking permits/decals or passes as set forth in section (2) above. Any fees/costs associated with parking permits/decals, together with appropriate information sufficient to justify the fee/cost amount, shall be submitted for review and approval by the TBR prior to implementation at any institution, pursuant to the requirement set forth in TBR policy.~~
- ~~(4) Traffic: TBR institutions shall adopt policies with regard to motor and other vehicular traffic on institution owned, operated, or controlled sites. Those policies shall reflect the nature of traffic patterns, roads, and physical limitations of the particular institution owned or controlled site. TBR institutions are further directed to adopt and publish a traffic code reflecting the traffic rules and offenses for that institution's sites. Such violations may include, but are not limited to, all traffic offenses provided under state, county, or municipal ordinance applicable to the locality of each institutional site. Adoption of such policies shall be subject to prior review and approval by the TBR. Once adopted or amended all traffic and parking regulations shall be affirmatively communicated to the faculty, staff, and students of the institution as well as published in appropriate websites, handbooks, or manuals.~~
- ~~(5) Fines/Penalties: TBR institutions shall have the authority to adopt appropriate fines and/or disciplinary sanctions for violations of the traffic and parking regulations established pursuant to sections (3) & (4) above. Fines may be set as determined necessary at each institution, but shall not exceed the amounts provided for by the higher of state law, county, or municipal ordinance for the same offense. Such fines are subject to the prior review and approval of the TBR, pursuant to the requirement set forth in TBR policy. Proposed fines shall be submitted to the TBR together with information sufficient to justify the fine. Such information shall include consideration of state/county/municipal fines for the same offense, fines for the same offense at similarly situated institutions, association to enforcement costs at the institution, and/or the unique traffic/parking considerations at each institution. Once adopted or amended, all fines shall be affirmatively communicated to the faculty, staff, and students of the institution as well as published in appropriate websites, handbooks, or manuals.~~
- ~~Appeals: Institutions shall establish an appropriate system of due process associated with any traffic/parking codes or fines, consistent with the due process requirements set forth in TBR Systemwide Rule 0240-02-03-06 below, wherein persons cited for violation of institutional traffic/parking regulations may contest their citations. Institutions are authorized to establish alternative or multiple methods/bodies for hearings and/or for the resolution of such matters.~~

Authority: T.C.A. §§ 4-5-101 et seq. and 49-8-203. Administrative History: Original rule filed August 10, 2011; effective January 29, 2012. Amendment filed August 18, 2015; effective November 15, 2015; Repeal filed _____; effective _____.

0240-02-03-.06 Disciplinary Procedures~~DISCIPLINARY PROCEDURES~~

(1) General:-

- (a) Institutions governed by the TBR, in the implementation of TBR policies pertaining to discipline and conduct of students, shall provide insure the constitutional rights of students with by affording a system of constitutionally and legally sound procedures that which provide the protection of due process of law. In furtherance of this mandate, all TBR institutions shall enact policies setting forth the disciplinary procedures for the institution. All such policies shall be enacted in accordance compliance with these rules, institutional restatement of these rules, is rule, TBR Policy 3:02:01:00, and applicable state and federal law. All policies adopted pursuant to this rule shall be subject to prior review and approval. Once adopted or amended, all The institution's restatement of rules, processes, and disciplinary procedures shall be affirmatively communicated to the faculty, staff, and students of the institution as well as published on the institution's in appropriate website and communicated to students, handbooks, or manuals.
- (b) At community colleges, the Vice President of Student Affairs or other administrator designated by the institution is responsible for matters within the scope of these rules, except that the Chief Academic Officer is responsible for matters related to academic misconduct. In situations where the conduct could fall within both areas of responsibility, the two offices will confer and decide which rules will apply and advise the student or student organization in writing of the decision. At colleges of applied technology, the president or designee has responsibility.
- (c) Complaints related to discrimination, harassment, and retaliation that are not subject to another rule will be investigated and resolved in accordance with these rules and the institution's restatement of these rules, procedures, and processes.
1. In determining whether the evidence establishes a violation of these rules, the institution shall use the standard of evidence for contested cases under the UAPA and Department of State Rule 1360-04-01. At all times the burden of obtaining evidence and establishing a violation shall be on the institution.
 - 1.2. In the event of bias or conflict of interest by an institutional official, the institution may appoint a substitute, who may or may not be employed by the institution.
 - 2.3. The investigator shall conduct an appropriate investigation, which may include interviews of the parties and witnesses, as well as review of documents and other information. The purpose of the investigation is to determine whether the evidence establishes a violation of these rules. The parties are encouraged, but not required, to provide information that they want the investigator to consider.
 - 3.4. The investigator shall provide written notice of receipt of a written complaint or the decision to initiate an investigation.
 - 4.5. The investigator shall notify students that the institution will comply with FERPA and only disclose information in accordance with FERPA and other applicable law.
 - 5.6. The investigator shall prepare a report summarizing the investigation. The report shall include, but not be limited to, the dates of the alleged occurrences, the response of the

respondent, the findings of the investigator, and recommendations regarding disposition of the complaint.

6.7. The report shall be submitted to the institution's president within sixty (60) calendar days following receipt of the complaint, absent cause for extending the investigation timeline. In situations where more time is needed to complete the investigation, written notice shall be provided to the parties explaining the reasons.

7.8. The president shall review the investigator's report and shall make a written determination as to whether these rules have been violated and the appropriate disciplinary sanction, if any. The president's determination and the investigator's report shall be provided to the parties, unless prohibited by law.

9. Either party may send a written request to reconsider to the president within ten (10) working days, absent good cause, of receipt of the president's determination.

~~(i)~~ —

(i) The request to reconsider process shall consist of an opportunity for the parties to provide information to the president's attention that would change the determination and/or disciplinary sanction. A party must explain why the factual information was incomplete, the analysis of the facts was incorrect, the determination was affected by bias or a conflict of interest, procedural irregularity, and/or the appropriate standard was not applied, and how this would affect the determination. Failure to do so may result in denial of the request to reconsider.

(ii) The parties will not be allowed to present their request to reconsider in person unless the president determines, in his or her sole discretion, to allow an in-person appearance.

(iii) The president shall issue a written response to the request to reconsider as promptly as possible. The decision will constitute the institution's final decision.

(iv) The institution shall provide written notice of the ability to contest the determination and/or disciplinary sanctions, including where applicable, the ability to request a contested case hearing pursuant to the UAPA, to the parties at the time the parties are advised of the determination and upon the resolution of any request to reconsider or appeal.

(d) Students and student organizations subject to any disciplinary sanction are entitled to a due process hearing unless that right is waived by the student after receiving written notice of the available procedures.

(e) All proceedings under these rules will be held in closed session and not open to the public. Formal rules of evidence shall not be applicable. The administrator or committee chair may exclude evidence which in their judgment is immaterial, irrelevant, or unduly repetitious. Evidence in contested case hearings will be considered in accordance with TBR Rule 0240-01-05 and Department of State Rule 1360-04-01.

~~(+)~~(f) Written notice to a student or student organization is accomplished either by handing a copy to the student; sending documents via to email to the student's or student organization's institutional email account; email account of record on file with the institution; or by sending a copy via certified mail, registered mail, return receipt requested mail, or a nationally recognized delivery service that tracks delivery to the student's residence of record or the student organization's address of record.

(2) Initiation of Charges

- (a) An institution may initiate the disciplinary process on the basis of written allegations received from any source, including any member of the college community. Complaints should be directed to the Vice President of Student Affairs or other administrator identified by the institution, except that complaints relating to discrimination, harassment, and retaliation should be referred to the administrator identified by the institution so that such complaints can be handled in accordance with these rules. The institution may also initiate disciplinary procedures without written allegations if it becomes aware of potential violations of these rules through other means.
- (b) When the allegations, if proven, may warrant the imposition of a disciplinary sanction, the institution shall inform the student of the allegations and proceed to gather information concerning the matter, including, but not limited to, interviewing relevant witnesses and reviewing relevant documents and evidence. Students who may be the subject of disciplinary sanctions will be provided the minimum due process protections identified in these rules.
- (c) After reviewing the evidence, the administrator with responsibility for the matter shall decide whether sufficient evidence exists to charge the student, and if so, the appropriate disciplinary sanction. Notice of the charges and disciplinary sanction, if any, shall be provided in writing to the student. If there is insufficient evidence to continue the disciplinary process, the matter will be closed, and written notice will be provided to the student.

(3) Minimum Due Process Protections. Institutions shall provide the following minimal procedural due process protection components in disciplinary matters:

- (a) The student shall be advised, in writing, of the breach of the rule(s) of which he or she is charged;
- (b) The student shall be advised of the time, date, and place of the hearing allowing reasonable time for preparation; and
- (c) The student shall be advised of the following rights applicable at the hearing:
 - 1. The right to present his or her case;
 - 2. The right to be accompanied by an advisor of his or her choice. The advisor's participation shall be limited to advising the student, and not include advocating on behalf of the student, speaking on behalf of the student, or otherwise actively representing the student. An advisor is not permitted to interfere with the hearing;
 - 3. The right to call witnesses in his or her behalf;
 - 4. The right to confront witnesses against him or her; and
 - 5. The method and time limitations for appeal, if any is applicable.

(4) Options for Students. Four potential processes exist for adjudication of disciplinary matters. The student will be informed in writing of each available option and the due process rights associated with each option. A student will have five (5) business days following written notification to select an option. If a student fails to return the election of a procedure in a timely manner, the student will be deemed to have waived the right to contest the disciplinary sanction. Selection of one option constitutes waiver of all other options.

- (a) Contested Case Hearing Procedure: All cases which may result in either ~~(a)~~ suspension or expulsion of a student from the institution for disciplinary reasons, or ~~(b)~~ revocation of registration of a student organization, are is subject to the contested case provisions of the Uniform Administrative Procedures Act (UAPA), T.C.A. §§ 4-5-301 et seq., and shall be processed in accord with TBR Rule 0240-01-05, the Uniform Contested Case procedures adopted by the Board of Regents, unless the student or student organization, after receiving written notice, waives those procedures.
- (b) A student at a community college may elect an institutional panel hearing. A student at a college of applied technology may elect a formal hearing in front of a single administrator appointed by the president.

1. Institutional Panel Hearing (Community Colleges)

- (i) An institutional panel hearing committee at a community college shall consist of at least three (3) individuals and include at least one student. The dean of students or other administrator identified by the institution will assemble the committee and coordinate the hearing but will not vote as to the committee's decision. An individual who has an interest in the incident, a conflict of interest, or a bias is not permitted to serve on the committee. The institution may appoint individuals from standing pools and/or appoint ad hoc committees.
- (ii) The committee will set a hearing date that is within fifteen (15) business days of receipt of the student's appeal. The student must be notified of the date, time, and location of the hearing as soon as possible, but given at least seven (7) calendar days' notice. A student will be notified of the due process protections provided for in these rules.
- (iii) The committee will conduct the appeal hearing, consider the relevant evidence presented, and make a decision based on a simple majority vote. The committee can either uphold, overturn, or lessen the disciplinary finding and/or sanction. The results of the decision will be conveyed to the student in writing, through the dean of students or other administrator identified by the institution, within ten (10) business days of the hearing.
- (iv) If the committee upholds or lessens the disciplinary finding and/or sanction, the student may appeal in writing to the president within five (5) business days following receipt of the decision of the committee. The president will make a decision within ten (10) business days. The president's decision is final.
- (v) The president, dean of students or other administrator identified by the institution has the ability to extend deadlines for good cause and upon written notice to the student.
- (vi) The institution shall maintain all submissions by the student and all decisions of institutional officials and committees permanently.

2. Formal Administrative Hearing (Colleges of Applied Technology)

- (i) The president of a college of applied technology shall appoint an administrator who will set a hearing date that is within fifteen (15) business days of receipt of the student's appeal. The student must be given at least seven (7) calendar days' notice of the hearing. A student will be notified of the due process protections provided for in these rules.
- (ii) The administrator will conduct a hearing, consider the relevant evidence presented, and make a decision either upholding, overturning, or lessening the disciplinary

finding and/or sanction. The results of the decision will be conveyed to the student within ten (10) business days of the hearing.

(iii) If the administrator upholds or lessens the disciplinary finding and/or sanction, the student may appeal in writing to the president within five (5) business days following receipt of the decision of the committee. The president will make a decision within ten (10) business days. The president's decision is final.

(iv) The president has the ability to extend deadlines for good cause and upon written notice to the student.

(c) Administrative Resolution. An administrative resolution involves the student meeting with a single administrator appointed by (i) for community college students, the dean of students or other administrator identified by the institution or (ii) for college of applied technology students, the president. There is no appeal. The decision of the administrator is final.

(d) A student may elect not to contest the disciplinary action, which serves as a waiver of the right to contest the disciplinary action.

~~(2) to have the case disposed of in accord with institutional procedures or waives all right to contest the case under any procedure. These procedures shall be described in the institution's policy.~~

~~(a) For cases which may result in Interim Involuntary Withdrawal or Suspension, the institution must incorporate the guidelines set forth herein at (6) in its decision-making processes.~~

~~(3) Institutional Procedures: For matters not subject to the requirements of TUAPA, each institution shall include in its policies a description of the procedures applicable at each level of a student/organizational misconduct, student housing violation or traffic/parking violation proceeding, including procedures for the initiation, investigation, resolution and/or prosecution of a violation applicable at each level, including appeal(s). This policy shall also set forth minimum requirements for advance notice of charges/violations as well as the time, date, and place for any procedure or hearing.~~

~~Institutional Hearings: For matters not subject to the requirements of TUAPA, institutions shall establish a body or bodies, with authority to hear student/organizational misconduct, student housing violations, or traffic/parking violations. Such body may be constituted as determined by the institution and may consist of one (1) individual or a committee. Authority may be vested in a single entity or in separate bodies.~~

~~(4) Minimum Requirements of Due Process for Institutional Hearings: Institutional hearing bodies and procedures governing discipline in cases of student/organizational misconduct, student housing violations and/or traffic/parking violations may be structured in any manner deemed appropriate given the organizational structure of the individual institution, but shall include the following minimal procedural components:~~

~~(a) The student shall be advised, in writing, of the breach of regulation(s) of which she/he is charged;~~

~~(b) The student shall be advised of the time, date, and place of the hearing allowing reasonable time for preparation;~~

~~(c) The student shall be advised of the following rights applicable at the hearing:~~

~~1 The right to present his or her case,~~

~~2 The right to be accompanied by an advisor,~~

~~3 The right to call witnesses in his or her behalf,~~

~~4~~ The right to confront witnesses against him or her, and

~~5~~ The student shall be advised of the method and time limitations for appeal, if any is applicable.

~~Students subject to any disciplinary sanction are entitled to a due process hearing unless that right is waived by the student after receiving written notice of the available procedures.~~

~~(5)~~ (5) Procedures Related to Interim Involuntary Withdrawal or Suspension Hearings

(a) When the Vice President for Student Affairs or other administrator identified by the institution determines that an interim suspension or other interim measure is required for the health and safety of the institutional community and/or property, or to prevent an ongoing imminent threat of disruption to or interference with the normal operations of the institution, the student will receive an opportunity for an informal hearing with the Vice President of Student Affairs or other administrator identified by the institution to contest the interim measure.

~~(a)~~

(b) The informal hearing will be held within five (5) calendar days, absent good cause.

~~(b)~~

(c) The evidence presented at the hearing shall be limited to that which is relevant to the basis asserted for imposition of the interim suspension or other interim measure.

~~6~~ Hearings conducted with regard to interim involuntary withdrawals or suspensions, imposed prior to or pending the outcome of a disciplinary investigation or proceeding shall be conducted consistent with the minimum requirements of due process applicable to the institutional hearing, taking into account the need for a timely hearing. The evidence presented at the hearing shall be limited to that which is relevant to the basis asserted for imposition of the interim involuntary withdrawal or suspension.

~~i~~ In determining whether a student should be involuntarily withdrawn or suspended for threatening or disruptive conduct, the institution shall consider the nature, duration, severity, and probability of the threat posed and/or the disruption caused by a student, relying on the best available objective evidence and, if applicable and obtainable, the most current medical evidence.

~~ii~~ The institution shall also determine whether reasonable modifications of its policies, practices, or procedures could sufficiently mitigate the risk.

~~iii~~ Absent exigent circumstances creating an imminent risk of harm, the assessment will be made prior to a decision to involuntarily withdraw or suspend based on the threat he or she poses to others.

~~iv(d)~~ (d) The student will be entitled to a formal hearing in accordance with the due process protections described in these rules before a permanent disciplinary sanction is imposed. If exigent circumstances warrant the immediate removal of a student from the institution, the student will receive, at a minimum, notice and an initial opportunity to present evidence immediately after being placed on involuntary withdrawal and the opportunity to initiate full due process within thirty (30) days of the removal.

~~7(6)(67)~~ Alternative Resolution Procedures: An institution is authorized to establish alternative or multiple methods/bodies for hearings and/or for the resolution of disciplinary matters, with the consent of all relevant parties, may use an alternative resolution method, but are not limited to, an apology, mediation or diversion programs, and/or a negotiated resolution.

Authority: T.C.A. §§ 4-5-101 et seq. and 49-8-203. Administrative History: Original rule filed August 10, 2011; effective January 29, 2012. Emergency rules filed August 18, 2015; effective through February 14, 2016. Amendment filed August 18, 2015; effective November 15, 2015; Amendment filed _____;

| DRAFT 1-19-21

| effective.

Rules of
The Tennessee Board of Regents
State University and Community College System
of Tennessee

Systemwide Student Rules
Chapter 0240-02-10
Title IX Compliance

New Chapter

Table of Contents is added to Chapter 0240-02-10 and shall read as follows:

0240-02-10-.01 Statement of Nondiscrimination on the Basis of Sex
0240-02-10-.02 Definitions
0240-02-10-.03 Equitable Treatment
0240-02-10-.04 Reporting Sexual Harassment
0240-02-10-.05 Investigations and Outcome
0240-02-10-.06 Severability

0240-01-10.01 Statement of Nondiscrimination on the Basis of Sex is added to Chapter 0240-01-10 and shall read as follows:

0240-02-10-.01 Statement of Nondiscrimination on the Basis of Sex. The Tennessee Board of Regents (the TBR) and institutions under its jurisdiction, as explained in institutional restatements of these rules, will comply with Title IX of the Education Amendments of 1972, §485(f) of the Higher Education Act, 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.

Authority: T.C.A. §§ 4-5-101 et seq. and 49-8-203. Administrative History: Original rule filed _____ 2021; effective _____, 2021.

0240-02-10-.02 Definitions is added to Chapter 0240-01-10 and shall read as follows:

0240-02-10-.02 Definitions

- (1) Complainant – a person who is alleged to be the victim of conduct that could constitute Sexual Harassment. A complainant may also be referred to as a Party.
- (2) 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.
- (3) 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 harassment occurred. Relevant factors include whether the alleged conduct took place (i) on or off premises owned or controlled by TBR or a TBR institution, (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 an officially-recognized student organization. Whether the 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 the alleged harassment took place on premises owned or controlled by a TBR institution. The Title IX Coordinator will make a fact-specific decision whether, if proven, the allegations arise out of an education program or activity.

- (4) 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);
- (a) Words and/or conduct that would cause a reasonable person to fear:
1. Physical force or other harm to the person's health, safety, or property, or a third person's health, safety, or property;
 2. Loss or impairment of an academic benefit, employment benefit, or money;
 3. Disclosure of sensitive personal information or information that would harm a person's reputation;
 4. Disclosure of video, audio, or an image that depicts the person's nudity or depicts the person engaging in sexual act(s); or
 5. Other immediate or future physical, emotional, reputational, financial, or other harm to the person or a third person.
- (5) Formal Complaint - a document filed by a complainant or signed by the Title IX Coordinator alleging Sexual Harassment against a respondent and requesting that the 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.
- (6) "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.
- (7) Respondent - a person who has been alleged to be a perpetrator of conduct that could constitute sexual harassment. A respondent may also be referred to as a party.
- (8) "Retaliation" for purposes of these rules means to intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by these rules or by Title IX, 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 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 these rules constitutes retaliation. Retaliation is a violation of these rules regardless of whether the underlying allegation is ultimately found to have merit.
- (a.) The exercise of rights protected under the First Amendment does not constitute retaliation.
- (b.) Charging an individual with a violation of these rules or other rules for making a

materially false statement in bad faith in the course of a grievance proceeding under these rules does not constitute retaliation.

- (9) Sexual Harassment - conduct on the basis of sex that satisfies one or more of the following:
- (a) An employee of TBR or a TBR institution conditioning provision of an aid, benefit, or service of an institution on an individual's participation in unwelcome sexual conduct (quid pro quo);
 - (b) 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. A TBR institution 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 sexual harassment be construed to prohibit speech protected by the First Amendment to the United States Constitution (e.g., merely offensive or insulting speech); or
 - (c) Domestic violence as defined by federal law, domestic violence as defined by state or federal law, or stalking as defined by federal law.

Authority: T.C.A. §§ 4-5-101 et seq. and 49-8-203. Administrative History: Original rule filed _____ 2021; effective _____, 2021.

0240-02-10-.03 Equitable Treatment is added to Chapter 0240-01-10 and shall read as follows:

0240-02-10-.03 Equitable Treatment

- (1) No Title IX Coordinator, investigator, decision-maker, person designated to facilitate an informal resolution process, or anyone deciding an appeal shall 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 TBR institution or someone not employed by a TBR institution in order to avoid potential bias, a potential conflict of interest, or for other reasons. In the event of a conflict of interest or 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 TBR Central Office shall be responsible for appointing someone to serve the functions of the Title IX Coordinator.
- (3) Each institution 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 shall proceed with a presumption that a respondent is not responsible for the alleged conduct unless and until a determination of responsibility for a violation is made at the conclusion of the decision-making process. It is the institution's responsibility to establish sexual harassment and not any party's responsibility to prove or disprove sexual harassment.
- (6) The institution shall provide simultaneous written notification to the parties of:
 - (a) Any initial, interim, or final decision by an official authorized to resolve disciplinary matters;

- (b) Any available appeal procedures for that decision;
 - (c) Any change to that decision; and
 - (d) When that decision becomes final.
- (7) The parties will receive timely and equal access to information.
- (8) A TBR institution will not restrict any rights protected from government action by the First Amendment to the U.S. Constitution, deprive a person of any rights that would otherwise be protected from government action under the Due Process Clauses of the Fifth and Fourteenth Amendments to the U.S. Constitution, or restrict any other rights guaranteed against government action by the U.S. Constitution or State of Tennessee Constitution.

Authority: T.C.A. §§ 4-5-101 et seq. and 49-8-203. Administrative History: Original rule filed January 2021; effective _____, 2021.

0240-02-10-.04 Reporting Sexual Harassment is added to Chapter 0240-01-10 and shall read as follows:

0240-02-10-.04 Reporting Sexual Harassment

- (1) Applicability
- (a) Allegations of sexual discrimination or harassment that do not meet the definition of sexual harassment or otherwise do not meet the criteria for filing a formal complaint will be handled in accordance with TBR's Rules for Student Conduct and Disciplinary Sanctions, Chapter 0240-02-03.
 - (b) Upon receiving and assessing a report of sexual harassment and/or other sexual discrimination or harassment, the Title IX Coordinator will decide whether the criteria for proceeding under these rules, procedures, and processes are met and whether additional rules, procedures and processes may apply.
 - (c) These rules apply to conduct by third parties, such as vendors with whom the institution contracts to provide services, and campus visitors.
- (2) Reporting to Title IX Coordinator
- (a) Any person may report sexual harassment to the Title IX Coordinator 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.
 - (b) Although reports and complaints of sexual harassment 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.
 - (c) An institution shall publish its Title IX Coordinator's name and contact information (mailing address, phone number, email address, etc.) in institutional materials and on its website.
- (3) Supportive and Interim Measures
- (a) After receiving a report of potential sexual harassment, 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.

- (b) 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.
 - (c) Interim/supportive measures 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 harassment.
 - (d) 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.
 - (e) 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.
- (4) Formal Complaint
- (a) Any person alleging to be a victim of sexual harassment that took place within an education program or activity of a TBR institution in the United States may file a formal complaint.
 - (b) A complainant who wants a TBR institution to conduct an investigation and take action in accordance with these rules must file a formal complaint alleging sexual harassment.
 - (c) 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 signature.) A formal complaint cannot be submitted anonymously. Only the Title IX Coordinator can submit a formal complaint on behalf of another person.
 - (d) 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 TBR rules and applicable law. Thus, when the Title IX Coordinator receives a report of sexual harassment, the Title IX Coordinator may decide to investigate the matter, 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.
 - (e) 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 harassment 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.

- (5) Confidential Resources (who will not share information with Title IX Coordinator)
- (a) TBR encourages students who have experienced Sexual Harassment 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. Institutions shall explain that some resources are confidential and should be considered if the complainant does not want the institution to investigate the matter.
 - (b) 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. Institutions shall identify and provide contact information for any confidential reporting options within the institution.
 - (c) 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 harassment or abuse of a minor.
- (6) No Retaliation
- (a) Retaliating 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 harassment (or any other form of unlawful discrimination or harassment) is prohibited. Students are not permitted to interfere with an investigation. Retaliation or interference will result in disciplinary sanctions consistent with these rules and other rules.
 - (b) In order to help prevent retaliation, institutions should 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 harassment, any complainant, any respondent, and any witness except as is required to carry out an institution's responsibilities under these rules and other rules, as required or permitted by required by state or federal law.
- (7) Complainant Services
- (a) Each institution shall provide notice of available assistance and services to complainants. The statement 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 number 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 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 and 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 person to the hospital or health provider; and
7. A statement that these services are available whether or not a complainant chooses to make an official report, file a formal complaint, or participate in the institutional disciplinary or criminal process.

(8) Reporting Pursuant to Nottingham Act

- (a) 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 the 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 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 or more persons who shall have the authority and duty to notify the appropriate 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.
- (b) If the victim does not consent to the reporting, the chief security officer or chief law enforcement office of each institution shall not report the offense to the local law enforcement agency.

Authority: T.C.A. §§ 4-5-101 et seq. and 49-8-203; 49-7-2207; 49-7-129. Administrative History: Original rule filed _____ 2021; effective _____, 2021.

0240-02-10-.05 Investigations and Outcomes is added to Chapter 0240-01-10 and shall read as follows:

0240-02-10-.05 Investigations and Outcomes

(1) Intake and Assessment of Formal Complaints

- (a) 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. Formal complaints that include some allegations that, if proved, constitute sexual harassment and some that do not meet that definition will be investigated pursuant to these and other applicable rules, procedures, and processes and adjudicated in accordance with these and other applicable rules, procedures, and processes. As appropriate, the Title IX Coordinator may initiate proceedings under these rules, refer the matter to another department, and/or inform the complainant about the availability of other methods to address the allegations.
- (b) 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.
- (c) 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.
- (d) If it appears, based on an allegation of sexual harassment, 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's Rules for Student Conduct and Disciplinary Sanctions, Chapter 0240-02-03, related to interim suspensions.
- (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.
- (f) There shall be no separate procedure for investigating and resolving complaints of sexual harassment involving student-athletes or any other subgroup of students.

(2) Notice of Allegations

- (a) 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 harassment). The notice of allegations will enable both parties to appeal the dismissal or to proceed under another rule. The notice of allegations shall contain:
 1. An explanation of the investigation and grievance process;
 2. The availability of an informal resolution process;
 3. Explanation of the allegations potentially constituting sexual harassment 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;

4. The identity of the parties involved in the incident, if known, and the date and location of the alleged incident;
 5. A statement that the respondent is presumed not responsible for the alleged conduct unless and until a determination of responsibility has been issued;
 6. 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 advisor);
 7. Any prohibitions against knowingly making false statements or knowingly submitting false information; and
 8. 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 harassment is prohibited and will result in disciplinary sanctions, up to and including dismissal.
- (b) 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.

(3) Dismissal of Formal Complaints

- (a) 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 Harassment 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.
- (b) 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.
- (c) The Title IX Coordinator may decide to dismiss a formal complaint of sexual harassment and refer the matter for disposition pursuant to a different rule when an allegation of sexual harassment is dismissed or when a formal complaint ceases to include an allegation of sexual harassment.
- (d) 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 rule.

(4) Informal Resolutions

- (a) 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 creating 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. The parties must agree in writing to participate in any informal resolution process that the Title IX Coordinator may offer.

- (b) 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, and identify any records that will be maintained or shared related to the process.
 - (c) The Title IX Coordinator shall not offer or facilitate an informal resolution process to resolve allegations that an employee engaged in sexual harassment against a student.
- (5) Investigation of Formal Complaints
- (a) The TBR institution will investigate all formal complaints, unless dismissed or resolved.
 1. 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.
 2. 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 witnesses, unless they decline to be interviewed. 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.
 3. 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.
 4. 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.

5. 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.
6. 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.
7. 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.
8. Prior to the completion of an investigation 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 party's 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 access to the evidence independent of the portal, e.g., documents submitted by the party or publicly available information).
9. 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.

(6) Written Report

- (a) At the conclusion of the investigation, the investigator will prepare written report. The report shall:
 1. Identify the allegations;
 2. Identify relevant rules;
 3. 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
 4. Fairly summarize the relevant evidence.
- (b) The written report shall not make findings of fact or conclusions regarding the application of facts to these rules.
- (c) At least ten (10) calendar days prior to a hearing, the investigator will send to each party the investigation report for 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.
- (d) The parties should provide any written response as soon as possible. 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.

(7) Advisors

- (a) 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 these rules shall be read to require that an institution allow a party to attend an interview of the other party or of a witness.
- (b) 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.
- (c) An advisor's failure to comply may result in the termination of the meeting or the advisor no longer being permitted to be present.
- (d) TBR and institutional personnel employed in the offices responsible for the disciplinary proceedings described in these rules, along with those in the chain of command, personnel employed by the Office of General Counsel, and others whose participation could 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.
- (e) 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 an attorney representing the institution can attend any meeting at which an attorney will be present.

(8) Recordings

- (a) Parties are not permitted to record any meeting conducted pursuant to these rules.
- (b) 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.

(9) Past Relationships and Conduct

- (a) Previous sexual relationships of the complainant and respondent with third parties generally are irrelevant.
- (b) 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.
- (c) 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.

(10) Standard of Evidence

- (a) In evaluating whether sexual harassment occurred, institutions shall use the preponderance of the evidence standard. A "preponderance of the evidence" means the greater weight of the evidence or that, according to the evidence, the conclusion sought by the party with the burden of proof is the more probable conclusion.

- (b) The burden of proof will remain with the institution through the determination.

(11) Timeline

- (a) Formal complaints typically will be resolved (exclusive of any appeals) within ninety (90) calendar days of filing.
- (b) Appeals will be resolved within fifteen (15) calendar days of the filing of an appeal.
- (c) Given the many variables and factors that may arise in such cases, additional time may be needed in some cases. Any departure from these time 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 extend 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.
- (d) Incompletion of the process within such time frames is not cause for dismissal of a formal complaint.

(12) Parallel Investigations with Law Enforcement

- (a) 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.
- (b) 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.
- (c) 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.

(13) Live Hearings

- (a) The institution will conduct a live hearing of formal complaints not dismissed in order to make a determination whether these rules have 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 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.
- (b) 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.
- (c) 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.
- (d) 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.
- (e) At least ten (10) business days prior to a live hearing, the institution will provide both parties with written notice of the following:

1. The time, place, date of the hearing, and electronic access information, if applicable;
 2. 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;
 3. 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;
 4. 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;
 5. 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 institution's 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;
 6. Any party in need of an institution-provided advisor must inform the Title IX Coordinator at least five (5) business days before the hearing;
 7. Any cross-examination of any other party or witness must be conducted by the advisor; and
 8. Additional information may be included in the notice of hearing.
- (f) 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 a party. 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.
- (g) 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.
- (h) 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.
- (i) If a party fails to attend a hearing, the decision-maker may proceed without that party's participation.
- (j) 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.
- (k) 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.

- (l) Only relevant cross-examination and other 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.
 - (m) 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.
 - (n) 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.
 - (o) 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.
 - (p) 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.
 - (q) 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.
 - (r) 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.
 - (s) 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.
 - (t) 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.
- (14) Written Determination
- (a) Within fifteen (15) business days of the hearing, the decision-maker will issue a written determination that will be provided to the parties simultaneously.
 - (b) 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.
 - (c) The determination will include:
 1. Identification of the allegations potentially constituting sexual harassment, as well as identification of any additional allegations that are being resolved but which do not constitute sexual harassment;

2. 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;
3. Findings of fact supporting the determination;
4. Conclusions regarding the application of these rules, as well as any other relevant rules, procedures, or processes to the facts;
5. A statement of, and rationale for, the result as to each allegation before the decision-maker, including a determination regarding responsibility;
6. Any disciplinary action that the decision-maker imposes on the respondent, including referral to another process, such as tenure termination proceedings;
7. Any remedies that the institution will provide designed to restore or preserve equal access to the complainant; and
8. The permissible bases and procedures, including timelines, for appeals by the parties.

(15) Remedies and Disciplinary Action Following Determination of Violation

- (a) The institution will provide remedies where a determination of responsibility for sexual harassment has been made. The institution will follow these and other applicable rules before the imposition of any disciplinary sanctions for sexual harassment that are not supportive/interim measures.
- (b) Remedies will be designed to restore or preserve equal access to education programs and activities and will include one or more sanctions identified in TBR's Rules for Student Conduct and Disciplinary Sanctions, Chapter 0240-02-03.
- (c) Remedies may also consider improvements to the campus-wide environment. Institutions should consider the impact of an incident of sexual harassment on the campus as a whole or specific groups or areas of campus. For example, specific training may be needed for a student group.
- (d) The Title IX Coordinator is responsible for ensuring effective implementation of the remedies.

(16) Appeals/Post-Determination Procedures

- (a) 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:
 1. Procedural irregularity that affected the outcome of the matter;
 2. 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; or
 3. The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome.
- (b) 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.

- (c) As to all appeals, the Title IX Coordinator will:
1. Notify the other party in writing when an appeal is filed;
 2. Implement appeal procedures equally for both parties;
 3. Ensure that the decision-maker(s) for the appeal is not the same person as the investigator, the decision-maker, or Title IX Coordinator; and
 4. Provide each party five (5)-business days to provide a written statement in support of, or challenging, the determination.
- (d) 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.

Authority: T.C.A. §§ 4-5-101 et seq. and 49-8-203. Administrative History: Original rule filed _____ 2021; effective _____, 2021.

0240-02-10-.06 Severability is added to Chapter 0240-01-10 and shall read as follows:

0240-02-10-.06 Severability

- (1) If any provision of the Title IX regulations on which these rules are 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 these rules or the application of its provisions to any person, act, or practice shall not be affected thereby.
- (2) For conduct that occurs across revisions of these rules or other standards, complaints of sexual harassment will be addressed utilizing the procedures outlined in the rules in effect as of the date of the notice of allegations. The "Definitions" in effect as of the date of the alleged incident will be used. Complaints and reports of conduct spanning revisions of rules will be addressed using the "Definitions" in the rules in effect at the time of the most recent alleged incident.

Authority: T.C.A. §§ 4-5-101 et seq. and 49-8-203. Administrative History: Original rule filed _____ 2021; effective _____, 2021.

Sexual Misconduct : 6.03.00.00

Policy/Guideline 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 [S](#)sexual [M](#)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.

- Dating violence - violence against a person when the accuser and accused are dating, or who have dated, or who have or had a sexual relationship. "Dating" and "dated" do not include fraternization between two individuals solely in a business or non-romantic social context.

Violence includes, but is not necessarily limited to,

- inflicting, or attempting to inflict, physical injury on the accuser by other than accidental means;
 - placing the accuser in fear of physical harm;
 - physical restraint;
 - malicious damage to the personal property of the accuser, including inflicting, or attempting to inflict, physical injury on any animal owned, possessed, leased, kept, or held by the accuser; or,
 - placing a victim in fear of physical harm to any animal owned, possessed, leased, kept, or held by the accuser.
- 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 ~~decision~~ Determination whether, if proven, 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.
 - 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 – conduct on the basis of sex that satisfies either of the following:
 - 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). (With respect to conduct by employees, TBR institutions also prohibit sexual harassment in accordance with TBR Guideline P-080 and institutional policy.) 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/Guideline

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.

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.

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:<https://www.tbr.edu/oesi/office-organizational-effectiveness>

C. Lack of Bias and Equitable Treatment

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 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.
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 alleging to be ~~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 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.

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.

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.

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). If a Formal Complaints that includes some allegations that, if proved, constitute Sexual Misconduct and some that do not meet that definition, the Title IX Coordinator will decide whether ~~be~~ all allegations will be investigated handled pursuant to this policy or whether the allegations will be investigated separately. 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.

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);
- 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.
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

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 [witnesses, unless they decline to be interviewed](#). 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.

G. Investigation Report

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

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 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. [In determining whether Respondent engaged in Sexual Misconduct](#), TBR institutions use the preponderance of the evidence standard of evidence in evaluating whether Sexual Misconduct occurred. [A "preponderance of the evidence" means the greater weight of the evidence or that, according to the evidence, the conclusion sought by the party with the burden of proof is the more probable conclusion.](#) ~~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.

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 [time](#) 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 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 [Additional](#) ~~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 [a Party](#)~~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 [and other](#) 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.

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 [whether Respondent engaged in Sexual Misconduct](#), 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;
- 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 (6th 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 (6th Cir. 2020).

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; Revisions approved at August 12, 2020 Special Called Board Meeting; [Revised 2021 Board Meeting](#).

Related Policies

- [Sex Discrimination, Sexual Harassment or Sexual Misconduct](#)
- [Discrimination & Harassment - Complaint & Investigation Procedure](#)
- [Equal Employment Opportunity and Affirmative Action](#)
- [General Policy on Student Conduct & Disciplinary Sanctions](#)

**Presidents Virtual Meeting
Wednesday, March 3, 2021**

SUBJECT POLICY NUMBER: New Programs for Minors on Campus Policy: 7.04.00.00

PRESENTER: Brian Lapps, General Counsel

ACTION REQUIRED: Requires Vote

Background:

The Programs for Minors on Campus policy is an attempt to increase the safety of minors participating in college programs by requiring background checks and monitoring of employees and volunteers who interact with them. This type of policy has become much more common following problems at Penn State and Michigan State. It is geared toward college sponsored programs for the general public (as opposed to members of the public coming onto campus for public events). Please note that it does **not** apply to dual enrollment, middle college, or other students enrolled in the curriculum. It does **not** prohibit registered sex offenders from enrolling as students. Major features of the Programs for Minors on Campus Policy include:

1. College-wide coordinator is responsible for ensuring compliance by programs
2. Structure to conduct background checks
3. Training for covered adults
4. Exceptions if authorized by the President (and still subject to some protections)
5. Reporting Requirements
6. Acceptable visitation of minors with students and employees and requirements for supervising minors

Programs for Minors on Campus: 7.04.00.00

Policy/Guideline Area

Safety

Applicable Divisions

TCATs, Community Colleges

Purpose

Institutions must promote a safe environment for children who participate in on-campus programs and activities as well as off-campus programs and activities sponsored by a college, including online programs. The purpose of this policy is to foster a culture that is committed to preventing, recognizing, reporting, and addressing child abuse and child sexual abuse.

Definitions

- **Acceptable Visitation** means:
 - Employee or student is a minor and is enrolled in a credit/non-credit course;
 - Employee or student bringing an infant or small child for a brief social visit;
 - With supervisor or instructor permission and under certain limited and unforeseen circumstances (such as school closings), an employee or student bringing a minor child to a class or to work with the following restrictions:
 - Minor child cannot be ill
 - Minor child cannot be disruptive
 - Minor child must be supervised by the parent/guardian
 - Minor child cannot be left unattended while the employee/student is in class
 - Minor child cannot be left with a fellow student or co-worker
- **Covered Adult** means a person:
 - Who is eighteen (18) years of age or older; and
 - Who is an employee (regular, term appointment, student, full-time, part-time) of, or a person in a contractual or volunteer position with the college; and
 - Whom the Program Director reasonably anticipates will have direct contact with a minor in a Covered Program, by reason of the person's employment, contractual, or volunteer status with the institution.
- **Covered Program** means:
 - A program or activity in which minors may participate that is sponsored (whether in person or online) by the college; or
 - A program or activity in which minors may participate that is sponsored by an entity other than the college and involves use of college owned or controlled facilities/resources.

Examples of Covered Programs include, but are not limited to, athletic camps (regardless of who sponsors the camp), academic camps, lessons, workshops, competitions, and clinics.

Covered Program does not include:

- A program or activity that requires a minor to be accompanied by a parent or guardian;
- A program or activity designed primarily for enrolled college or high school students, including dual enrollment, middle college, credit courses, and community service projects organized by the college;
- A program or activity open to the general public;
- Orientation and campus tour/visitation programs;
- Field trips supervised by a minor participant's school or organization and not sponsored by the college;
- Social functions that may be attended by minors accompanied by a parent or guardian;
- Student teaching practicums.

Questions regarding whether a program/activity is subject to this policy should be addressed to the Programs for Minors Coordinator or other person designated by the President.

- **Minor or Child** means a person who is under eighteen (18) years of age or is reasonably presumed to be under eighteen (18) years of age.
- **Program Director** means the person primarily responsible for the management and oversight of a Covered Program, including identifying all Covered Adults and ensuring the Covered Program's compliance with this policy. With respect to a Covered Program not sponsored by the college, the Program Director is the college employee who serves as the primary college contact with the third party who is sponsoring the Covered Program.
- **Programs for Minors Coordinator** means the person appointed by the President to be responsible for the college's compliance with this policy and for oversight of Covered Programs and Program Directors.

POLICY/GUIDELINE

I. Prevention of Child Abuse

A. Training

1. The Programs for Minors Coordinator shall provide training programs designed to teach how to prevent, recognize, and address child abuse.
2. Program Directors and Covered Adults are required to take training prior to participation in a Covered Program. Retraining for Program Directors and Covered Adults is required every other year.
3. At a minimum, the training must address the following topics:
 - a. Definition of child abuse;
 - b. Signs, symptoms, and effects of child abuse;
 - c. Response to suspected child abuse, including but not limited to reporting suspected child abuse under Tennessee law and this policy; and
 - d. Child abuse prevention strategies.

B. Background Checks

1. The Programs for Minors Coordinator is responsible for ensuring that background checks for Covered Programs sponsored by the college are conducted on all Covered Adults prior to initial participation in a Covered Program and then no less frequently than every four (4) years. The criminal background check should be the

- same as used for employees who are subject to background checks.
2. Program Directors are responsible for notifying the Programs for Minors Coordinator of Covered Adults who plan to participate in a Covered Program in sufficient time for Covered Adults to undergo a background check and to receive training.
 3. Student volunteers who are actively enrolled in the college are not required to submit to a criminal background check, but a National Sex Offender public website and the Tennessee Department of Health's online abuse registry must be checked prior to participation in the Covered Program prior to the event.
 4. If a person's criminal background check indicates a conviction of any sexual offense; any offense against children; battery or assault; drug distribution offense or felony drug possession; homicide; kidnapping; or any felony or crime involving moral turpitude, the Programs for Minors Coordinator shall determine appropriate action in consultation with the Office of General Counsel and the President.
 5. The Programs for Minors Coordinator shall ensure that restrictions on participation are timely conveyed to Covered Adult and the Program Director.

C. Exceptions to Background Checks

1. If it is not feasible to conduct full criminal background checks due to volume, timing, or for other reasons, the Programs for Minors Coordinator, following consultation with the President, may permit preventive measures as outlined below in lieu of criminal background checks and training.
2. If the Programs for Minors Coordinator grants an exception, the Program Director is responsible for ensuring that:
 - a. All Covered Adults are checked and cleared using the National Sex Offender Registry's public website, Tennessee Felony Offender registry, and the Tennessee Department of Health's (TDOH) online abuse registry prior to participating in the Covered Program.
 - b. All Covered Adults work in a public place during the Covered Program, are supervised by a Covered Adult who has undergone a criminal background check, and present photo identification prior to the participation in the Covered Program.
 - c. All Covered Adults sign a statement verifying their understanding of, and agreement to comply with, Tennessee's law on the mandatory reporting of child abuse and child sex abuse.
 - d. The required documentation is provided to the Programs for Minors Coordinator.
3. For Covered Programs not sponsored by the college, the Program Director shall require the sponsor of the Covered Program to sign an agreement to indemnify and hold harmless the college for the acts or omissions of the program participants or the sponsor's employees or agents. The college may require the sponsor to provide proof of insurance satisfactory to the college. A copy of the completed agreement shall be forwarded to the Programs for Minors Coordinator. This requirement does not apply to a governmental entity that is prohibited by law from signing an indemnification agreement.

II. Reporting Requirements

A. External Reporting

1. Tennessee law mandates reporting by any person who has knowledge of physical or mental harm to a child if: (a) the nature of the harm reasonably indicates it was caused by brutality, abuse, or neglect; or (b) 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 an apparent injury as a result of the abuse.
2. The Tennessee mandatory reporting laws apply to all college employees, contractors, and volunteers, even if they are not Covered Adults, and even if the child abuse or child sexual abuse *did not* occur in connection with a Covered Program.
3. A report of child abuse or child sexual abuse must be made immediately to the Tennessee Department of Children's Services at the Central Intake Child Abuse Hotline at 1-877- 542-2873 or 1-877-237-0004. In the event of a life-threatening emergency, 911 should be contacted first.
4. Tennessee law provides immunity from civil and criminal liability for any person who makes a good faith report of suspected child abuse or child sexual abuse. In addition, no person making a good faith report of suspected child abuse or child sexual abuse, or participating in an investigation, shall be subject to retaliation by the college.

B. Internal Reporting

1. Reporting to college Police/Security, a supervisor, or any other college official or employee does not satisfy the legal duty for individuals to report child abuse and child sex abuse.
2. After reporting child abuse or child sexual abuse to the Tennessee Department of Children's Services, a college employee shall also provide notice of the report to their supervisor and the Programs for Minors Coordinator or other person identified by the President.
3. Upon receiving such a report, the employee's supervisor and the Programs for Minors Coordinator shall ensure that the Tennessee mandatory reporting statute has been followed and report the matter to the President or other person identified by the President.
4. The college shall ensure Clery Act compliance, evaluate whether there is also a legal duty to report the incident as a crime statistic, and whether to issue a timely warning notice.

III. Standards of Conduct Related to Covered Programs and Covered Adults

A. Covered Adults shall not:

1. Be alone in a vehicle with a minor, regardless of parent/guardian express or implied permission.
2. Utilize college facilities and resources to interact with minors outside of the scheduled time of the Covered Program.
3. Be alone with a minor away from other people. If one-one interaction is required, the Covered Adult should obtain advance approval from the Program Director and meet in open spaces observable by others.
4. Have physical contact or communication (either in person or electronically) with

- minors, except as appropriate to the nature of the Covered Program.
5. Meet a minor off of the site of the Covered Program or after the hours of the Program, even if another Covered Adult is present.
 6. Strike, shake, slap, administer corporal punishment to, or touch in an inappropriate or illegal manner, any minor.
 7. Humiliate, ridicule, threaten, or degrade a minor.
 8. Sleep in the same room or other enclosed space (such as a tent) as a minor, unless the Covered Adult is a parent, guardian, or relative of said minor.
 9. Shower or bathe with a minor or in the presence of a minor, unless the Covered Adult is a parent, guardian, or relative of said minor.
 10. Dress or undress in the presence of a minor, unless the Covered Adult is a parent, guardian, or relative of said minor.
 11. Use any language that encourages a minor to keep a secret from a parent/guardian, such as “this is between the two of us.”
 12. Invade the privacy of minors by intruding in situations such as changing clothes and taking showers, unless required for health and safety reasons.
 13. Wear inappropriate clothing (immodest, contains inappropriate advertising, etc.), as determined by the Program Director, when interacting with minors.
 14. Possess or engage in the use of alcohol or illegal drugs, or be under the influence of alcohol or illegal drugs, during the Covered Program.
 15. Provide alcohol, illegal drugs, prescription drugs, or any other medication to a minor.
 16. Take a photograph or video of a minor or post information about a minor on the Internet or social media without the written permission of the minor’s parent or guardian.
 17. Give a personal gift to a minor.
 18. View pornography during the Program, or make any form of pornography available to a minor participating in the Program, or assist a minor in any way in gaining access to any form of pornography.
 19. Permit minor children in spaces where inherent dangers exist such as, but not limited to, biology/chemistry labs, some art labs, the welding lab, etc.

IV. Acceptable Visitation by Minors

- A. There may be times when a student requests to bring a child to class in order not to miss class or an employee requests to bring a child to work in order not to miss work.
- B. Acceptable Visitation is for limited, non-recurring events and may be permitted by the instructor or the supervisor. Acceptable Visitation is not a routine or regular event, and under no circumstance should a sick child be brought to the college.
- C. If Acceptable Visitation is permitted, the parent/guardian must have the child stay with them; not ask another student or co-worker to watch the child; not leave the child unattended in a classroom, common area, car, or office; and remove the child if the child causes a disruption.
- D. The student or parent assumes full and complete responsibility for the child while on campus and for ensuring that the child does not engage in any behavior that could reasonably be found to be distracting, loud, boisterous, or inappropriate for a working or learning environment.
- E. Enforcement of Acceptable Visitation standards is the responsibility of the instructor if the person is a student or the supervisor if the person is an employee. Where it is not clear who the instructor or supervisor is, enforcement will lie with the administrator addressing the disruption.
- F. The Police Department should be contacted when minor children are found to be unattended.

Authority

T.C.A. § 49-8-203; THEC; SACS

History New policy approved