



Sexual Misconduct (6.6.4)

I. Purpose

This policy is intended to provide a single, easily accessible and user-friendly document for students, employees and others affected by sexual misconduct to find information regarding each institution's rules and procedures related to the offenses defined herein.

II. Scope/Applicability

- A.** These procedures shall be utilized by:
- 1.** Any employee or student who has been a victim of sexual misconduct, regardless of sexual orientation or gender identity/expression;
 - 2.** Former employees or students if the conduct took place during the time of employment or enrollment at Tennessee State University (TSU) and the conduct has a reasonable connection to the institution; and
 - 3.** University volunteers, University contractors, and third parties participating in a University program or activity.
 - 4.** All third parties with whom Tennessee State University has an educational or business relationship and the conduct has a reasonable connection to the institution.
- B.** This policy is adopted specifically to address the offenses defined herein. All other forms of sex discrimination including sexual harassment are also strictly prohibited. Allegations that are not within the scope of this policy are subject to the procedures described in TBR Guideline P-080 as adopted and implemented by [Tennessee State University Policy 141](#).

III. Definitions

- A. Campus Security Authorities:** Individuals from whom the University collects certain crime statistics for purposes of the Clery Act.

B. Consent: An informed decision, freely given, made through mutually understandable words or actions that indicate a willingness to participate in mutually agreed upon sexual activity. Consent cannot be given by an individual who is asleep; unconscious; or mentally or physically incapacitated, either through the effect of drugs or alcohol or for any other reason; or, is under duress, threat, coercion, or force. Past consent does not imply future consent. Consent to one type of Sexual Contact or Sexual Intercourse (e.g., oral intercourse) does not constitute or imply Consent for another type of Sexual Contact or Sexual Intercourse (e.g., vaginal intercourse), whether during a sexual encounter or during a previous sexual encounter. Silence or an absence of resistance does not imply consent. Consent can be withdrawn at any time.

C. Coercion: Words or conduct that, viewed from the perspective of a Reasonable Person, substantially impair a person's ability to voluntarily choose whether to engage in a particular sexual act (e.g., Sexual Contact or Sexual Intercourse). Coercion is something more than mere seduction or persuasion.

Coercion includes, without limitation:

1. Physical force; and

2. Words and/or conduct that would cause a Reasonable Person to fear imminent: harm to the person's health, safety, or property or that of a third person; threat of the loss of a job benefit; or kidnapping of the person or a third person.

D. Incapacitated (or Incapacitation): A temporary or permanent state in which a person cannot make informed, rational judgments (e.g., judgments concerning Sexual Contact, Sexual Intercourse, or Sexual Exploitation) because: the person lacks the physical or mental capacity to understand the nature or consequences of their words and/or conduct; and/or the person is unable to physically or verbally communicate Consent. Incapacitation can be voluntary or involuntary. Incapacitation is determined based on the totality of the circumstances.

Incapacitation may result from: sleep; unconsciousness; temporary or permanent physical or mental disability; involuntary physical restraint; or the influence of alcohol, drugs, or other substances, including, without limitation, substances used to facilitate Sexual Assault (e.g., Rohypnol, ketamine, GHB, and Burundanga).

When alcohol, drugs or other substances are involved, Incapacitation is a state beyond mere drunkenness or intoxication. Indicators of Incapacitation may include, without limitation: 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; vomiting; unresponsiveness; and inability to communicate coherently.

- **Preponderance of the evidence:** The amount of evidence that causes one to conclude that an allegation is probably true (i.e., more likely true than not true). If the evidence on a particular allegation is equally balanced, then that allegation has not been proven by a preponderance of the evidence.
- **Complainant:** A person who asserts that he/she has been subjected to Sexual Misconduct or Relationship violence. This term does not imply pre-judgment concerning whether the person was subjected to Sexual Misconduct and/ or Relationship violence.
- **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:
 1. Inflicting, or attempting to inflict, physical injury on the victim by other than accidental means;
 2. Placing the accuser in fear of physical harm;
 3. Physical restraint;
 4. Malicious damage to the personal property of the victim, including inflicting, or attempting to inflict, physical injury on any animal owned, possessed, leased, kept, or held by the victim; or
 - Placing a victim in fear of physical harm to any animal owned, possessed, leased, kept, or held by the accuser. CA 36361(c)
- **Domestic violence:** violence against a person when the accuser and accused:
 1. Are current or former spouses;
 2. Live together or have lived together;
 3. Are related by blood or adoption;
 4. Are related or were formally related by marriage; or
 - Are adult or minor children of a person in a relationship described above.

Domestic violence includes, but is not necessarily limited to, the following:

 1. Inflicting, or attempting to inflict, physical injury on the accuser by other than accidental means;
 2. Placing the accuser in fear of physical harm;

3. Physical restraint;
4. 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 the accuser in fear of physical harm to any animal owned, possessed, leased, kept, or held by the accuser. CA 36361

I. **Responsible employee:** A TSU employee who has the authority to redress sexual misconduct, who has the duty to report incidents of sexual misconduct, or whom a student could reasonably believe has this authority or duty.

- . **Sexual Assault:** The nonconsensual sexual contact with the accuser by the accused, or the accused by the accuser when force or coercion is used to accomplish the act, the sexual contact is accomplished without consent of the accuser, and the accused knows or has reason to know at the time of the contact that the accuser did not or could not consent. Sexual contact includes, but is not limited to, the intentional touching of the accuser's, the accused's, or any other person's intimate parts, or the intentional touching of the clothing covering the immediate area of the accuser's, the accused's, or any other person's intimate parts, if that intentional touching can be reasonably construed as being for the purpose of sexual arousal or gratification.
- . **Sexual Misconduct:** for the purposes of this policy, sexual misconduct is defined as domestic violence, dating violence, sexual assault, sexual exploitation and stalking.
- . **Sexual exploitation:** For purposes of this policy, sexual exploitation is defined as taking sexual advantage of another person for the benefit of anyone other than that person and without that person's consent. Sexual exploitation includes, but is not limited to, prostituting another person, recording images (video, photograph) or audio of another person's sexual activity or nakedness without that person's consent, distributing images or audio of another person's sexual activity or nakedness, if the individual distributing the images or audio knows or should have known that the person depicted in the images or audio did not consent to such disclosure and objects to such disclosure, and viewing another person's sexual activity or nakedness in a place where that person would have a reasonable expectation of privacy, without that person's consent, and for the purpose of arousing or gratifying sexual desire.

- M. Stalking** : a willful course of conduct involving repeated or continuing harassment of another individual that would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed, or molested, and that actually causes the accused to feel terrorized, frightened, intimidated, threatened, harassed, or molested. Harassment means conduct directed toward the accused that includes, but is not limited to, repeated or continuing unwelcome contact that would cause a reasonable person to suffer emotional distress, and that actually causes the accuser to suffer emotional distress. Harassment does not include constitutionally protected activity or conduct that serves a legitimate purpose. **CA 3 1 31**

I . Policy

Tennessee State University intends to comply fully with Title I of the Education Amendments of 1972, Section 48 (f) of the Title IX A, as amended by Section 104 of the Violence Against Women Reauthorization Act of 2013, the regulations implementing these Acts found at 4 CFR 841, 842, and Appendix A to Subpart C of Part 8, and Clery Act. The Jeanne Clery Disclosure of Campus Security and Campus Crime Statistics Act, 20 U.S.C. 1092 (f). Sexual misconduct is a form of sex discrimination prohibited by Title IX and Tennessee State University.

- A. Respondent:** A person or registered student organization that is reported to have committed Sexual Misconduct and /or Relationship Violence. This term does not imply pre-judgment concerning whether the person or registered student organization committed Sexual Misconduct and /or Relationship Violence.
- B. Responsible Employee:** A University employee identified in **Section III.A** (non-law enforcement),

. Confidentiality Considerations

- A.** Tennessee State University encourages survivors of sexual violence to talk to somebody about what happened so survivors of assault can get the support they need, and so the University can respond appropriately. Different employees on campus have different abilities to maintain a survivor's confidentiality.
1. Some are required to maintain near complete confidentiality; talking to them is sometimes called a privileged communication. Professional Counselors and Health Care Providers fall in this category.
 2. Other employees are required to report all the details of an incident (including the identities of both the victim and alleged perpetrator) to the Title IX coordinator. A report to these employees (called responsible employees) constitutes a report to the University and generally obligates the University to investigate the incident and take appropriate steps to address the situation.

- . This information is intended to make students aware of the various reporting and confidential disclosure options available to them so they can make informed choices about where to turn should they experience sexual harassment or sexual violence. TSU encourages survivors to talk to someone identified in one or more of these groups.

B. no our ptions: Privileged and Confidential Communications

1. ***Professional Counselors and Health Care Provider*** Professional, licensed counselors who provide mental-health counseling to members of the school community (including those who act in that role under the supervision of a licensed counselor) and healthcare providers, such as doctors and nurses, are not required to report any information about an incident to the Title I coordinator without a survivor's permission. Following is the contact information for individuals who qualify as counselors and healthcare providers at TSU:

TSU Counseling Center
Main Campus
Student Success Center/ RC
Room 114
1 - - 11
www.tnstate.edu/counseling

TSU Student Health Services
Main Campus
Floyd Payne Student Center, Room 04
1 - - 084
studenthealthservices.tnstate.edu

C. eportin to esponsible mployees.

A responsible employee is a University employee who has the authority to redress sexual violence, who has the duty to report incidents of sexual violence or other student misconduct, or who a student could reasonably believe has this authority or duty.

1. When a survivor tells a responsible employee about an incident of sexual violence, the survivor has the right to expect the University to take immediate and appropriate steps to investigate what happened and to resolve the matter promptly and equitably.
- . A responsible employee must report to the Title I coordinator all relevant details about the alleged sexual violence shared by the survivor, including the names of the survivor and alleged perpetrator(s), any witnesses, and any other relevant facts, including the date, time and specific location of the alleged incident.

- . To the extent possible, information reported to a responsible employee will be shared only with people responsible for handling the University's response to the report. A responsible employee should not share information with law enforcement without the survivor's consent or unless the survivor has also reported the incident to law enforcement.
- 4. The following offices are designated to receive and investigate complaints of sexual violence and sexual harassment at TSU:

Office of Equity and Inclusion (Title I Coordinator)
 Main Campus
 McArthur Administration Bldg., Ste. 0
 1 - - 4
www.tnstate.edu/equity

Student Conduct and Judicial Services (Title I Deputy Coordinator)
 Main Campus
 Floyd Payne Student Center, Room 10
 1 - -48 1
www.tnstate.edu/mediation

D. Categories of Employees for Reporting Purposes:

1. The following categories of employees are deemed responsible employees and must report any information regarding sexual harassment or sexual violence to the Office of Equity and Inclusion:
 - a. President, Vice Presidents, Asst./Assoc. Vice Presidents
 - b. Deans, Asst./Assoc. Deans, Department Heads, and other Administrative Supervisors
 - c. Professors, Instructors
 - d. Advisors for academic matters or student organizations
 - e. Staff in student resource and advocacy offices
 - f. Coaches, Trainers, and other athletics staff
 - g. TSU Police and Security Officers
 - h. Title I Coordinator and Deputy Coordinators
- . Before a survivor reveals any information to a responsible employee, the employee should ensure that the survivor understands the employee's reporting obligations and, if the survivor wants to maintain confidentiality, direct the survivor to confidential resources.
- . If the survivor wants to tell the responsible employee what happened, but also maintain confidentiality, the employee should tell the survivor that the University will consider the request, but cannot guarantee that the University will be able to honor it. In reporting the details of the incident to the Title I Coordinator, the responsible employee will also inform the Coordinator of the survivor's request for confidentiality. The Title I Coordinator, in conjunction and consultation with University Counsel, will determine if the

survivor's request for confidentiality can be honored.

4. Responsible employees will not pressure a survivor to request confidentiality, but will honor and support the survivor's wishes, including for the University to fully investigate an incident. By the same token, responsible employees will not pressure a survivor to make a full report if the survivor is not ready to.

Requesting Confidentiality from the University: How the University Will Respond.

1. If a survivor discloses an incident to a responsible employee, but wishes to maintain confidentiality or requests that no investigation into a particular incident be conducted or disciplinary action taken, the University must weigh that request against the University's obligation to provide a safe, non-discriminatory environment for all students, including the survivor. The University is charged with the authority, pursuant to this policy and under Title IX, to investigate the incident even if the survivor requests that the University not conduct an investigation into a particular incident or wishes to keep the incident confidential.

- If the University honors the request for confidentiality, a survivor must understand that the University's ability to meaningfully investigate the incident and pursue disciplinary action against the alleged perpetrator(s) may be limited.

- There are times when the University may not be able to honor a survivor's request in order to provide a safe, non-discriminatory environment for all students. The University has designated the following individual(s) to evaluate, in consultation with University Counsel, requests for confidentiality once a responsible employee is on notice of alleged sexual violence:

Equal Opportunity Affirmative Action Office
Main Campus
McClur Administration Bldg., Ste. 100
1 - 2 - 4
www.tnstate.edu/eoaa

4. When weighing a survivor's request for confidentiality or that no investigation or discipline be pursued, the Title IX Coordinator in the Equal Opportunity Affirmative Action Office, in consultation with the University Counsel, will consider a range of factors, including, but not limited to, the following:
 - a. The increased risk that the alleged perpetrator will commit additional acts of sexual or other violence;
 - b. whether any records possessed by the University reveal there have been other sexual violence complaints about the same alleged perpetrator;
 - c. whether the alleged perpetrator threatened further sexual violence or other violence against the survivor or others;
 - d. whether the sexual violence was committed by multiple perpetrators;

- e. whether the sexual violence was perpetrated with a weapon;
 - f. whether the survivor is a minor;
 - g. whether the University possesses other means to obtain relevant evidence of the sexual violence (e.g., security cameras or personnel, physical evidence);
 - h. whether the survivor's report reveals a pattern of perpetration (e.g., via illicit use of drugs or alcohol) at a given location or by a particular group;
 - i. the nature and level of dissemination of information to members of the campus community regarding the alleged perpetrator's actions; and
 - k. the overall risk of negatively impacting the educational environment of the campus community.
- . If the University determines that it cannot maintain a survivor's confidentiality, the University will inform the survivor prior to starting an investigation, and will, to the extent possible, only share information with people responsible for handling the University's response.
 - . The University will remain ever mindful of the survivor's well-being, and will take ongoing steps to protect the survivor from retaliation or harm and work with the survivor to create a safety plan. Retaliation against the survivor, whether by students or University employees, will not be tolerated. The University will also:
 - a. assist the survivor in accessing other available survivor advocacy, academic support, counseling, disability, health or mental health services, and legal assistance both on and off campus (see portion of policy identifying these);
 - b. provide other security and support, which could include issuing a no-contact order, helping arrange a change of living or working arrangements or course schedules (including for the alleged perpetrator pending the outcome of an investigation) or adjustments for assignments or tests; and
 - c. inform the survivor of the right to report a crime to campus or local law enforcement and provide the survivor with assistance if the survivor wishes to do so.
 - . Because the University is under a continuing obligation to address the issue of sexual violence campus-wide, reports of sexual violence (including non-identifying reports) will also prompt the University to consider broader remedial action such as increased monitoring, supervision or security at locations where the reported sexual violence occurred; increasing education and prevention efforts, including to targeted population groups; conducting climate assessments/victimization surveys; and/or revisiting its policies and practices.

If the University determines that it can respect a survivor's request for confidentiality, the University will also take immediate action as necessary to protect and assist the survivor.

- . **Reports to Tennessee State University professional licensed counselors**

- 1. Reports to Tennessee State University professional licensed counselors are

confidential in every respect to the extent allowed by law.

II. Miscellaneous

A. **The Clothesline Project and Other Public Awareness Events**

Public awareness events such as the Clothesline Project, candlelight vigils, protests, survivor speak outs or other forums in which students disclose incidents of sexual violence, **are not considered notice to the University of sexual violence for purposes of triggering its obligation to investigate any particular incident(s)**. Such events may, however, inform the need for campus-wide education and prevention efforts, and the University will provide information about students' Title I rights at these events.

B. **Off-campus Counselors and Advocates**

Off-campus counselors, advocates, and health care providers will also generally maintain confidentiality and not share information with the University unless the survivor requests the disclosure and signs a consent or waiver form.

Following is contact information for these off-campus resources:

Sexual Assault Center of Asheville
101 French Landing Drive
Asheville, TN 28808
1 - 800 - 844 - 0101 or 1-800-844-0101
www.sacenter.org

The National Sexual Assault Hotline
1-800-671-4444

While these off-campus counselors and advocates may maintain a survivor's confidentiality vis-à-vis the University, they may have reporting or other obligations under state law.

- a. Professional licensed counselors who provide mental-health counseling to members of Tennessee State University's community (and including those who act in that role under the supervision of a licensed counselor) are not required to report any information about an incident to the Title I Coordinator and will not do so without a victim's written permission.

The State Counselor Center is staffed by professional licensed counselors who are not required to report any information about sexual violence, domestic violence or stalking. The Counselor Center is located at: Main Campus

Student Success Center (SSC) Ste. 114

- b. Professional licensed counselors will maintain confidentiality of any such reports unless required by law or court order to disclose the information.

For example, Tennessee's mandatory reporting law related to abuse of minors, imminent harm to others, or subpoenas for testimony may require disclosure of all information received.

- c. If the employees or volunteers identified in this section determine that there is imminent threat to others and Tennessee State University determines that the alleged perpetrator(s) pose a serious and immediate threat to the Tennessee State University community, Tennessee State University may be called upon to issue a timely warning to the community. Any such warning will not include any information that identifies the victim.
- d. A victim who speaks to a professional licensed counselor must understand that, if the victim wants to maintain confidentiality, Tennessee State University will be unable to conduct an investigation into the particular incident or pursue disciplinary action against the alleged perpetrator(s).
- e. Professional licensed counselors will assist the victim in receiving other necessary protection and support, such as victim advocacy, academic support or accommodations, disability, health or mental health services, and changes to living, working or course schedules.
- f. In some cases, providing requested assistance might require the professional licensed counselor to reveal identifying information to other individuals.
 - . Professional licensed counselor must receive written permission from the victim to reveal the minimum information necessary to arrange requested assistance.
- h. Upon receipt of written permission to disclose confidential information to Tennessee State University, professional licensed counselors must contact the Title I Coordinator and the University Police if a victim decides to file a complaint with Tennessee State University or report the incident to local law enforcement.

C. Reports to off campus counselors and advocates may be confidential to the extent allowed by law

- 1. Off-campus counselors, advocates, and health care providers will also generally maintain confidentiality and not share information with Tennessee State University unless the victim requests the disclosure and signs a consent or waiver form.
- 2. While these off-campus counselors and advocates may maintain a victim's confidentiality vis-à-vis Tennessee State University, victims should discuss concerns related to the limits of confidentiality with the off-

campus counselors, advocates and health care providers. Those individuals may have reporting or other obligations under state law such as reporting under Tennessee's mandatory reporting law related to abuse of minors, imminent harm to others, or subpoenas for testimony that may require disclosure of information received.

D. Reporting to University Police (Cottonham Act requirements)

1. Unless the victim of a sexual assault 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. 4 - -1 .

- . 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. 4 - - 0 ; Public Acts 00 , Chapter 0 .

. Reports that are not considered notice

1. Public awareness events such as Take Back the Night, the Clothesline Project, candlelight vigils, protests, survivor speak outs or other forums, including social media and class discussions, in which students disclose incidents of sexual misconduct are not considered notice to Tennessee State University of sexual misconduct for purposes of triggering its obligation to investigate any particular incident(s).
2. Such events may, however, inform the need for campus-wide education and prevention efforts, and Tennessee State University will provide information about students' Title I rights at these events or during the forum.

I . Tennessee State University's response to a report of Sexual Misconduct

A. Tennessee State University will take ongoing steps to protect the complainant from retaliation or harm and work with the complainant to create a safety plan. Retaliation against the complainant, whether by students or Tennessee State University employees, will not be tolerated.

B. After appropriate consideration of confidentiality requirements and to the extent

reasonable, Tennessee State University will:

1. Assist the complainant in accessing other available victim advocacy, academic support, counseling, disability, health or mental health services, and legal assistance both on and off campus (see Section I below for more information on interim measures);
2. Provide other security and support, which could include issuing a no-contact order, helping arrange a change of living or working arrangements or course schedules (including for the alleged perpetrator pending the outcome of an investigation) or adjustments for assignments or tests; and
3. Inform the complainant of the right to report a crime to campus or local law enforcement and provide assistance if the complainant wishes to do so.
 - a. While respecting the limits of confidentiality, the Title I Coordinator will review reports to determine if broader remedial action is required such broader remedial action may include but is not limited to increased monitoring, supervision or security at locations where the reported sexual misconduct occurred, increased education and prevention efforts, including to targeted population groups, conducting climate assessments/victimization surveys, and/or revisiting its policies and practices.
4. Investigate the incident under the procedures and based on the considerations set forth under this policy.

Role of Title I Coordinator

- A. Tennessee State University's Title I Coordinator is responsible for overseeing all Title I incidents reported to Tennessee State University and for the implementation of this policy, including but not limited to identifying and addressing any systemic gender-based harassment, discrimination, and sexual misconduct. The Title I Coordinator's responsibilities include, but are not limited to:
 1. Investigation or oversight of investigations of allegations related to Title I, in consultation with University Counsel;
 2. Coordination and oversight of educational programs including mandatory training for new students and employees and awareness campaigns for current students and employees;
 3. Coordination with University Police and local law enforcement on matters related to allegations related to sexual misconduct;

4. Coordination and oversight of training for law enforcement, responsible employees, victim advocates, and anyone else involved in responding to, investigating, or adjudicating sexual misconduct;
 - . Coordination and oversight of training for employees likely to witness or receive reports of sexual misconduct, including professors, school law enforcement, school administrators, school counselors, general counsels, athletic coaches, health personnel and resident advisors;
 - . Coordination and oversight of training for responsible employees related to appropriately responding to reports of sexual misconduct and the obligation to report sexual misconduct to the Title I Coordinator or other designated official;
 - . Coordination and oversight of training for professional counselors and individuals covered by Section II.C. relating to the extent to which they may keep a report confidential;
8. Coordination and oversight of annual training for investigators, decision makers, hearing officers and hearing committee members on the issues related to sexual misconduct and on how to conduct an investigation and hearing process that protects the safety of complainants and promotes accountability; and
 - . Attending appropriate training annually on topics related to responding to or investigating allegations of sexual misconduct.

B. The Title I Coordinator, in consultation with University Counsel, may designate deputies and investigators (designees) to assist in carrying out any of the responsibilities related to implementing this policy.

C. The Title I Coordinator shall report at the beginning of each new school year to TBR's Office of General Counsel the name of and contact information for Tennessee State University's Title I Coordinator.

I. Investigation Requirements and Procedures

A. All proceedings will include a prompt, fair, and impartial investigation and result. Tennessee State University will provide the respondent and complainant equitable rights during the investigative process.

B. All complaints of sexual misconduct shall be presented to the Title I Coordinator or designee for investigation and appropriate disposition.

C. Mediation between the complainant and respondent will never be considered an appropriate resolution in sexual misconduct cases.

- . Investigations shall be conducted in accordance with the following procedures:

1. Investigations under this policy shall be conducted in consultation with University Counsel in the same manner prescribed in TBR Guideline P-080..
 - . Absent good cause, within one (1) business day of receipt of a report of sexual misconduct from a complainant or responsible employee, the Title I Coordinator or designee shall attempt to get a written statement from the complainant that includes information related to the circumstances giving rise to the complaint, the dates of the alleged occurrences, and names of witnesses, if any. The complainant may fill out a complaint form or submit a detailed written report of the alleged incident.
 - . When the complainant chooses not to provide or sign a written complaint, the Title I Coordinator or designee will investigate to the extent possible and take appropriate action.
4. Both before and during the pendency of the investigations, the Title I Coordinator shall consider what, if any, interim measures may be necessary. See Section I below for more information related to interim measures.
 - . Complaints made anonymously or by a third party will be investigated to the extent possible.
 - . After consultation with the University Counsel, if the Title I Coordinator determines that the complaint contains an allegation of sexual misconduct, the Title I Coordinator shall follow the procedures set forth in this policy to investigate and adjudicate the complaint.
 - . The Title I Coordinator may appoint one of the deputy Title I Coordinators a qualified, sufficiently trained person to investigate the allegations made in the complaint.
8. Only one person shall be identified as the investigator, though the investigator may have a second person present during interviews to take notes.
 - . Investigations shall be conducted by officials who do not have a conflict of interest or bias for or against the complainant or respondent.
10. If the Complainant or Respondent believes the investigator(s) has a conflict of interest, that party must submit a written explanation of the reason for that belief to the President or University Counsel. The explanation must be submitted within three (3) business days, absent good cause, of the time when the party knew or should have known the facts that would give rise to the alleged conflict of interest. The President will determine if the facts warrant the appointment of a different investigator and respond to the party in writing within three (3) business days, absent good cause. The decision of the President shall be final.

11. Once the investigator receives the complaint, the investigator shall notify the Complainant in writing of his/her rights and request a meeting.
13. The investigator shall also notify the Respondent in writing of the complaint and his/her rights and request a meeting with the respondent.
13. The investigator shall notify the Complainant, Respondent and all individuals interviewed during the investigation that retaliation is strictly prohibited and may be grounds for disciplinary action. In addition, the investigator shall advise all interviewees that they should contact the investigator immediately if they believe they are being retaliated against.
14. The investigation shall include interviews with both the Complainant and Respondent, unless either declines an in-person interview.
15. The complainant and respondent shall be provided with the same opportunities to have others present during any interview, including the opportunity to be accompanied by the advisor of their choice to any related meeting or proceeding.
16. Tennessee State University will not limit the choice of advisor for either the complainant or respondent.
17. The investigation shall include interviews with relevant witnesses named by the Complainant and Respondent or any other potential, relevant witness made known to the investigator.
18. The investigation shall include the gathering and reviewing of any documentary, electronic, physical, or other type of relevant evidence.
19. The investigator is expected to request a list of relevant witnesses and evidence from Complainant and Respondent and take such into consideration.
20. The investigator shall not consider any evidence about the complainant's prior sexual conduct with anyone other than the alleged perpetrator. Evidence of a prior consensual dating or sexual relationship between the parties by itself does not imply consent or preclude a finding of sexual misconduct.

II. Outcome of Investigation and Determination of Appropriate Action

1. Upon completion of the investigation, the investigator shall prepare a written report that includes the allegations made by the complainant, the response of the respondent, corroborating or non-corroborating statements of the witnesses, review of other evidence obtained, conclusions that may be drawn from the evidence gathered, and recommendations about the disposition of the matter.

- . It is the responsibility of the investigator to weigh the credibility of all individuals interviewed and to determine the weight to be given to information received during the course of the investigation.
 - . The investigator shall make findings of fact, including a finding as to whether a policy violation has occurred, and recommendations based on the investigation, and shall reflect the findings and recommendations, along with other pertinent information, in a written report. The investigator's findings shall be based on a preponderance of the evidence standard. The report shall also indicate whether the matter should be forwarded to appropriate personnel or Judicial Affairs for disciplinary action.
4. The report shall be forwarded to the University Counsel for legal sufficiency review.
 - . After the University Counsel determines the report is legally sufficient, the report shall be forwarded to the applicable Vice President for review. The Vice President, in consultation with University Counsel, is authorized to accept the findings and recommendations, modify the recommended action to be taken, remand the report for further investigation, or not uphold the findings that a policy violation has occurred.
 - . The Vice President's determination shall be communicated in writing simultaneously to the Complainant and Respondent, if practicable, along with notice to the parties of their right to request an institutional hearing on the determination that a policy violation did or did not occur.

III. Timeframe for Conducting the Investigation

1. Every reasonable effort shall be made to conclude the investigation and resolve the complaint within sixty (60) calendar days following receipt of the complaint. Within this sixty (60) day timeframe, absent good cause, it is expected that the investigator will conclude the investigation, that the investigator will present a report to the Vice President, and that the investigator will notify the parties in writing of the Vice President's determination.
2. If the investigator determines that additional time is needed, both parties shall be notified in writing of the delay, the anticipated date that the investigation will be concluded, and the reasons for such delay.
3. If either party determines that additional time is needed in connection with their participation in the investigation, that party shall request such in writing to the investigator or Title I Coordinator. The written request for additional time shall include the reasons for the requested delay and the number of additional days needed.
4. The investigator shall make every reasonable effort to respond to the request for additional time within two (2) business days following receipt of the

request and shall notify both parties in writing as to whether or not the request is granted.

I . Institutional hearing

- A. Either party may request an institutional hearing on the determination that a policy violation did or did not occur by providing written notice of the request to the investigator within ten (10) business days of receipt of the vice President's decision.
- B. If a request is not received within ten business (10) days, the vice President's determination is final.
- C. The hearing may be held before either a hearing officer or hearing committee. The President shall determine, in his or her sole discretion, whether to proceed with a hearing officer or hearing committee and shall appoint individuals to serve in those capacities.
 - . If the Complainant or Respondent believes the hearing officer or the hearing committee member(s) has a conflict of interest, that party must submit a written explanation of the reason for that belief to the President. The explanation must be submitted within three (3) business days, absent good cause, of the time when the party knew or should have known the facts that would give rise to the alleged conflict of interest. The President will determine if the facts warrant the appointment of a different investigator and respond to the party in writing within three (3) business days, absent good cause. The decision of the President shall be final.
 - . If such a hearing is requested, every reasonable effort shall be made to conclude the hearing and resolve the appeal, including any appeal to the President, within thirty (30) days following Tennessee State University's receipt of the party's request for a hearing.
- F. The parties to the hearing may not engage in formal discovery.
- G. Each party is entitled to have an advisor of choice available; however, the advisor may not participate in the proceeding other than to render advice to the party.
 - . Tennessee State University will not limit the choice of advisor for either the complainant or respondent.
- I. The complainant and respondent shall be timely notified of all meetings relevant to the proceeding and allowed to attend all hearing proceedings.
 - . The hearing officer or chair of the hearing committee shall control the procedures of the hearing with due consideration given to the parties' requests related to procedures such as, but not limited to, limitations on cross-examinations, recesses so the parties may consult with their advisors, and scheduling of hearings.

- . The hearing officer or hearing committee shall use a preponderance of the evidence standard when reaching a decision.
- . Absent good cause, within five () business days of the close of evidence, the hearing officer or committee shall issue a written determination as to whether or not a violation of this policy occurred and the justification for this decision.
- M. Each party shall be simultaneously notified of the hearing officer or committee's decision in writing, which shall include notice of their rights to appeal the hearing officer's or committee's determination to the President.

. Appeal of Hearing Decision

- A. If either party chooses to appeal the hearing officer's/committee's decision, the party shall notify the investigator in writing of the decision to appeal within five () business days of receipt of the hearing officer's/committee's determination.
- B. If a written request for appeal is not received within five () days, the decision of the hearing officer/committee is final.
- C. The appealing party(ies) may appeal only for one of the following reasons: 1) the factual information was incomplete,) the analysis of the facts was incorrect, and/or) the appropriate legal standard was not applied, and must also show how the applicable reason would change the determination in the case.
- . The President will issue a written response to the appeal as promptly as possible. This decision will constitute Tennessee State University's final decision on the complaint.

I. Effect of a Finding of a Violation of this Policy

- A. If a final decision has been made that a policy violation occurred, the Respondent shall be referred to the appropriate personnel for a determination of discipline.
- B. The appropriate personnel will be determined by the status of the Respondent. If the Respondent is a student, the matter shall be referred to the Judicial Affairs officer for action. If the Respondent is an employee, the matter may be referred to the Human Resources Department or the appropriate administrator for action.
- C. If the Respondent is a student, Tennessee State University shall follow the Student Conduct Policy procedures governing disciplinary action involving students.

- . Notwithstanding any policy to the contrary, the following additional requirements apply to disciplinary actions related to violations of this policy:

1. The Complainant shall receive sufficient notice of and be allowed to attend any meeting or hearing during the disciplinary process;
 2. The Complainant shall be allowed to have an advisor of her/his choice attend any meeting or hearing during the disciplinary process;
 3. The Complainant shall be allowed to testify at any hearing during the disciplinary process, even if neither party intends to call the Complainant as a witness during the case-in-chief;
 4. The Complainant shall be allowed access, consistent with the requirements of the Family Educational Rights and Privacy Act (FERPA), to any evidence presented during any disciplinary meeting or hearing;
 - . The Title I Coordinator or designee shall be appointed as the Complainant's contact person for any questions or assistance during the disciplinary process; and
 6. The Complainant shall receive written notice, consistent with FERPA, of the outcome of the disciplinary process.
- F. If a final decision has been made that a policy violation occurred, the Title I Coordinator or designee shall determine any remedies needed to address the campus-wide environment, taking into consideration the impact of an incident of sexual misconduct on the campus as a whole and on specific groups or areas on campus. For example, the Title I Coordinator or designee may determine that specific training is needed for a student group whose members have been accused of sexual misconduct.

II. Tennessee State University May Take Interim Measures

- A. In situations that require immediate action because of health or safety related concerns, Tennessee State University will take any reasonable interim administrative action that is appropriate. Examples of such interim actions include, but are not limited to:
 - a. Providing an escort to ensure that the complainant can move safely between classes and activities;
 - b. Ensuring that the complainant and respondent do not attend the same classes. In the event the institution decides to involuntarily remove a student Respondent from a class, the student Respondent shall be entitled to the same due process as provided to Student Respondents placed on interim suspension under the Student Conduct Policy;

- c. Moving the complainant or Respondent to a different residence hall. In the event the institution decides to involuntarily move a student Respondent to a different residence hall, the student Respondent shall be entitled to the same due process as provided to Student Respondents placed on interim suspension under the Student Conduct Policy;
 - d. Providing counseling services;
 - e. Providing or assisting in providing medical services;
 - f. Providing academic support services, such as tutoring; and
 - g. Arranging for the complainant to re-take a course or withdraw from a class without penalty, including ensuring that any changes do not adversely affect the complainant's academic record.
- B.** These remedies may be applied to one, both, or multiple parties involved.
- C.** Student Respondents may be placed on interim suspension under the appropriate circumstances pending the outcome of the investigation. Tennessee State University will follow TSU's Student Conduct Policy before placing a student respondent on interim suspension.
- D.** Employee Respondents may be, consistent with Human Resource policies, placed on administrative leave pending the outcome of the matter.

III. Education and Prevention Programs

- A.** Tennessee State University engages in comprehensive educational programming to prevent sexual misconduct. Educational programming consists of primary prevention and awareness programs for all incoming students and new employees and ongoing awareness and prevention campaigns for students and faculty that:
- 1. Identifies domestic violence, dating violence, sexual assault and stalking as prohibited conduct;
 - 2. Defines what behavior constitutes domestic violence, dating violence, sexual assault and stalking;
 - 3. Defines what behavior and actions constitute consent to sexual activity in the State of Tennessee;
 - 4. Provides safe and positive options for bystander intervention that may be carried out by an individual to prevent harm or intervene when there is a risk of domestic violence, dating violence, sexual assault and stalking against a person other than the bystander;

- . Provides information on risk reduction so that students and employees may recognize warning signs of abusive behavior and how to avoid potential attacks; and
- 6. Provides an overview of information contained in the Annual Security Report in compliance with the Clery Act.

B. A complete list of programs can be found here www.tnstate.edu/e_uity

I . Assistance for Victims of Sexual Misconduct: Rights and Options

- A. Regardless of whether a victim elects to pursue a criminal complaint, Tennessee State University will assist victims of sexual misconduct and will provide each victim and accused with a written explanation of her/his rights as a member of Tennessee State University. www.tnstate.edu/e_uity/
- B. Survivors of sexual assault are strongly encouraged to not change or destroy clothes, take a shower or bath, wash his/her hands, use the toilet, brush his/her teeth, or clean up in any way. If the assault occurred in the survivor's home or residence hall, the victim should not rearrange and/or clean up anything. It is important for the survivor to seek medical attention immediately so that the survivor can be screened for sexually transmitted diseases/pregnancy/date rape drugs, obtain emergency contraception, and receive treatment for any physical injuries. Valuable physical evidence can be obtained from the survivor or the survivor's clothing.
- C. Additionally, in the Tennessee court system, a victim of domestic violence, dating violence, sexual assault and stalking has the following rights: the right to confer with the prosecution, right to be free from intimidation, harassment and abuse throughout the criminal justice system, the right to be present at all proceedings where the defendant has the right to be present, the right to be heard, when relevant, at all critical stages of the criminal justice process as defined by the General Assembly, the right to be informed of all proceedings, and of the release, transfer or escape of the accused or convicted person, the right to a speedy trial or disposition and a prompt and final conclusion of the case after the conviction or sentence, the right to restitution from the offender and the right to be informed of each of the rights established for victims. Information related to these rights may be found at <http://www.tndagc.com/vr.htm>.
- . Tennessee State University complies with Tennessee law in recognizing orders of protection. Any person who obtains an order of protection from Tennessee or any state should provide a copy to University Police and the office of the Title I Coordinator. That person may then meet with University Police to develop a Safety Action Plan, which is a plan for University Police and the person to reduce risk of harm while on campus or coming and going from campus. This plan may include, but is not limited to, escorts, special parking arrangements, providing a

temporary cellphone (with 11 call capability only), changing classroom location or allowing a student to complete assignments from home, etc.

.Protection from abuse orders may be available through <http://www.tncourts.gov/programs/self-help-center/forms/order-protection-forms> and additional information related to such orders may be found at <http://tncoalition.org/resources/legal-resources.html>.

F. Tennessee State University does not publish the name of crime victims nor maintain identifiable information regarding victims in the University Police’s Daily Crime Log or online.

G. Victims may request that directory information on file be removed from public sources by a request to the Office of the Registrar. The Office of the Registrar may be contacted at the following: records@tnstate.edu; (615) 974-1111 or (800) 840-4444 (telephone); or facsimile (615) 974-1111.

. Resources for Victims of Sexual Misconduct

The resources listed below are not exhaustive or limited to victims who wish to make an official report or participate in an institutional hearing, police investigation or criminal prosecution.

However, in cases where a victim wishes to maintain complete confidentiality, the victim should review carefully Section II above related to the limits on Tennessee State University’s ability to maintain confidentiality.

A. On Campus Resources

TSU Counseling Center	615 - 974 - 1111 www.tnstate.edu/counseling/	Student Success Center/ RC Ste. 114, Main Campus
TSU Campus Health Services	615 - 974 - 1111 Studenthealthservices.tnstate.edu www.tnstate.edu/campus_life/healthservices.aspx	Dean Hall, Room 04, Main Campus
University Police	615 - 974 - 1111 www.tnstate.edu/police/	Queen Washington Bldg., Main Campus
Office of the Title I Coordinator	615 - 974 - 4444 www.tnstate.edu/equality	Administration Bldg. Ste. 0, Main Campus
TSU Asst. Dean of Students/ Judicial Affairs Officer	615 - 974 - 4811 www.tnstate.edu/mediation/	Floyd Payne Student Center, 1 st Floor, Room 10, Main Campus
Associate Vice President Human Resources	615 - 974 - 8111 www.tnstate.edu/hr/	General Services Bldg., Weinman Street

Resources		
-----------	--	--

Additionally Tennessee State University has a Sexual Assault Response Team (SART) as an additional resource for the campus community. The SART is responsible for coordinating the university's response to instances of sexual assault. The SART is also responsible for reviewing the university's policies, practices and procedures to ensure that a coordinated and effective response occurs when sexual assault takes place. SART is composed of members from the University Office, Counseling Center, Health Center, Student Activities, Student Conduct and Police Department. For more information about SART and a full listing of its members please visit: [.tnstate.edu/e_uity](http://www.tnstate.edu/e_uity).

B. In the Nashville Metropolitan Area

Metro Nashville Police Davidson County Sheriff		11 or 11 or
Nashville General Hospital at Meharry capable of administering rape kits for use in criminal prosecutions	1818 Albion Street Nashville, TN 37208	1 - 41-4000
Sexual Assault Center of Nashville	101 French Landing Dr., Nashville, TN 37208	1 - 252-0 http://www.sacenter.org
Tennessee Coalition to End Domestic Sexual Violence	International Plaza Dr., Ste. 400, Nashville, TN 37203	1 - 800-442-40 http://tncoalition.org
The National Sexual Assault Hotline	4-hour Crisis Line	1-800-442-40
Domestic Violence Intake Center (Protective Orders)		<u>http://www.tncourts.gov/programs/self-help-center/forms/order-protection-forms</u>
Davidson County Courthouse	408 nd Avenue North, Nashville, TN 37203	1 - 800-442-40

C. Online Resources:

- <http://tncoalition.org/> - State Coalition Against Rape
- <http://tncoalition.org/> - State Coalition Against Domestic Violence
- <http://www.thehotline.org/> - Website for LGBT survivors of sexual or domestic violence and minority women survivors of sexual or domestic violence
- <http://www.pandys.org/malesurvivors.html> - Website for male survivors of sexual or domestic violence
- <http://www.rainn.org> Rape, Abuse and Incest National Network
- <http://www.ovw.usdoj.gov/sexassault.html> - Department of Justice
- <http://www.ed.gov/about/offices/list/ocr/index.html> Department of Education, Office of Civil Rights

. Retaliation

Tennessee State University, its officers, employees, or agents are strictly prohibited from retaliating, intimidating, threatening, coercing, or otherwise discriminating against any individual for exercising their rights or responsibilities under any provision of this policy. Retaliation will result in disciplinary measures, up to and including termination or expulsion.

I. Interpretation

In consultation with University Counsel, the Title I Coordinator or his/her designee shall be given significant deference in the interpretation of this policy, with the President having the final authority to interpret the terms of this policy.

II. Citation of Authority for Policy

Title I of the Education Amendments of 1972, Section 48 (f) of the Title IX A, as amended by Section 104 of the Violence Against Women Reauthorization Act of 2011; 4 CFR 8.41, 8.42, and Appendix A to Subpart C of Part 8. TBR Policy: Sexual Misconduct: 08/24/2011 10:00:00.

8/24/2011 1