



Sexual Misconduct

Policy No. 07.04

Policy Subject: Policy and procedures related to allegations of sexual misconduct

Effective Date: August 14, 2020, for any allegations occurring on or after August 14, 2020. For allegations prior to August 14, 2020, Sexual Misconduct Policy (6.6.4) applies and shall remain effective.

I. Purpose

The purpose of this policy is to provide a single, easily accessible and user-friendly document for students, employees and others affected by sexual misconduct to find information regarding Tennessee State University's (TSU) rules and procedures related to the offenses defined herein.

II. Scope/Applicability

- A.** This policy applies when TSU has actual knowledge of allegations of sex discrimination (including sexual harassment) in any of TSU's educational programs or activities against persons present in the United States. The Complainant must be participating or attempting to participate in the education program or activity of TSU to file a Formal Complaint.
- B.** This policy is adopted specifically to address the offenses defined herein. All other forms of sex discrimination including sexual harassment or other sexual misconduct are also strictly prohibited. Allegations of prohibited discrimination or harassment that are not within the scope of this policy may be addressed under other TSU policies, including but not limited to, TBR Guideline P-080 as adopted and implemented by Tennessee State University or TSU's Student Conduct Rule.

III. Definitions

- A. Actual knowledge:** Notice of sexual harassment or allegations of sexual harassment to TSU's Title IX Coordinator or any TSU official who has authority to institute corrective measures on behalf of TSU. This definition is not met when the only TSU official with actual knowledge is also the respondent.
- 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.

- E. 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.
- F. Complainant:** An individual who is alleged to be the victim of conduct that could constitute sexual harassment.
- G. Deliberately indifferent:** A response that is clearly unreasonable in light of the known circumstances.
- H. Education Program or Activity:** Locations, events, or circumstances over which TSU exercises substantial control over both the respondent and the context in which the alleged sexual harassment occurred, and also includes any building owned or controlled by a student organization that is officially recognized by TSU. Conduct that occurs outside of TSU's Program or Activity as defined in this policy may be subject to other applicable University policy.
- I. Employee:** For purposes of this policy, an employee is defined as faculty, executive, administrative, professional staff, clerical staff, and support personnel.
- J. Formal Complaint:** A document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that TSU investigate the allegation of sexual harassment. At the time of filing a formal complaint, a complainant must be participating in, or attempting to participate in, the education program or activity of TSU. As used in this paragraph, the phrase "document filed by a complainant" means a document or electronic submission (such as by electronic mail or through TSU's online reporting portal) that contains the complainant's physical or digital signature, or otherwise indicates that the complainant is the person filing the formal complaint. Where the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a complainant or otherwise a party under these procedures and must comply with the requirements of this policy.

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

L. Responsible Employee: A TSU official who has the authority to institute corrective measures on behalf of TSU.

M. Sexual Harassment: Conduct on the basis of sex that satisfies one (1) or more of the following:

1. An employee conditioning the provision of an aid, benefit, or service of TSU on an individual's participation in unwelcome sexual conduct (quid pro quo);

2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to TSU's education program or activity; or

3. Any of the following offenses:

a. **Sexual Assault:** An offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation.

(1) Forcible Sex Offenses. Any sexual act directed against the Complainant, without the consent of the Complainant including instances where the Complainant is incapable of giving consent. Forcible sex offenses include:

i. Rape (Excluding statutory rape). The carnal knowledge of the Complainant, without the consent of the Complainant, including instances where the Complainant is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.

ii. Sodomy. Oral or anal sexual intercourse with the Complainant, without the consent of the Complainant, including instances where the Complainant is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.

iii. Sexual Assault with an Object. To use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of the Complainant, without the consent of the Complainant including instances where the Complainant is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity. An "object" or "instrument"

as defined in this section is anything used by the offender other than the offender's genitalia (e.g., a finger or bottle).

iv. Fondling. The touching of the private body parts of the Complainant for the purpose of sexual gratification, without the consent of the Complainant, including instances where the Complainant is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.

(2) Nonforcible Sex Offenses. Nonforcible sex offenses include:

- i. Incest. Nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- ii. Statutory Rape. Nonforcible sexual intercourse with a person who is under the statutory age of consent.

b. **Dating Violence:** Violence committed by a person:

1) who is, or has been, in a social relationship of a romantic or intimate nature with the Complainant; and

(2) where the existence of such a relationship shall be determined based on a consideration of the following factors:

i. The length of the relationship.

ii. The type of relationship.

iii. The frequency of interaction between the persons involved in the relationship.

c. **Domestic Violence:** Violence committed by a current or former spouse or intimate partner of the Complainant, by a person with whom the Complainant shares a child in common, by a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner, by a person similarly situated to a spouse of the Complainant under the laws of the State of Tennessee, or by any other person against an adult or youth Complainant who is protected from that person's acts under the domestic or family violence laws of the State of Tennessee; or

d. **Stalking:** Engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

- (1) fear for his/her safety or the safety of others; or
- (2) suffer substantial emotional distress.

N. **Supportive Measures.** Non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures are designed to restore or preserve equal access to TSU's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties and/or the educational environment, or deter sexual harassment.

Supportive measures may include, but are not limited to, counseling, adjustments for assignments or tests, extensions of deadlines or other course-related adjustments, academic support services such as tutoring, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, providing or assisting in providing medical services, arranging a course re-take or withdraw from a class without penalty including ensuring that any changes do not adversely affect the student's academic record, and other similar measures. TSU will keep confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality does not impair TSU's ability to provide the supportive measures.

O. **Notice.** For the purposes of this rule, a notice is a written communication sent to a Complainant or Respondent. Notice may be provided in one or more of the following three manners: 1) hand delivered; 2) via the recipient's official TSU email account or any email account registered by the student with the university; or, 3) a hard copy letter sent via US mail to the individual's local address on file with TSU. Students and employees have the responsibility to regularly check their University-issued email accounts and to ensure that the local address on file with TSU is current. The requirement to provide notice will be satisfied by any one of the three ways to provide notice, and any period for response will begin on the date the notice is hand delivered or the email and/or letter is sent/mailed, whichever occurs first.

IV. Policy

A. Tennessee State University intends to comply fully with Title IX of the Education Amendments of 1972, Section 485(f) of the HEA, as amended by Section 304 of the Violence Against Women Reauthorization Act of 2013, the regulations implementing these Acts found at 34 CFR § 668.41, §668.46, and Appendix A to Subpart D of Part 668, and 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.

- B. Tennessee State University (TSU) does not discriminate on the basis of sex in the education program or activity that it operates, including admission and employment, and is required by Title IX of the Education Amendments of 1972 and 34 C.F.R. Part 106 (collectively "Title IX") not to discriminate in such a manner. Inquiries about the application of Title IX to TSU may be referred to the Title IX Coordinator, the U.S. Department of Education Assistant Secretary for Civil Rights, or both.
- C. When a person reports sex discrimination committed against a person while in the United States, TSU will follow its rules, procedures and processes used for Title VII sex discrimination allegations and TBR Guideline P-080 as adopted and implemented by Tennessee State University, which provide for the prompt and equitable resolution of complaints alleging sex discrimination.
- D. If TSU has actual knowledge of sexual harassment in an education program or activity committed against a person while in the United States, TSU will respond promptly and follow its grievance procedures in a manner that is not deliberately indifferent.
- E. Any action taken to address an allegation of harassment under this policy shall not infringe on rights protected under the U.S. Constitution, including the First Amendment, Fifth Amendment, and Fourteenth Amendment.
- F. TSU will notify applicants for admission and employment, students, employees, and any professional organizations holding professional agreements with TSU of this policy and will publish the contact information for the Title IX Coordinator on its website and in any handbook or catalog that it makes available to such individuals and organizations.

IV. 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. Professional Counselors and Health Care Providers are generally required to maintain near complete confidentiality; talking to them is sometimes called a "privileged communication."
2. Responsible Employees of the University are required to report all the details of an incident (including the identities of both the complainant and respondent) to the Title IX coordinator. A report to a Responsible Employee constitutes actual knowledge by the University – and requires the University to respond promptly in a manner that is not deliberately indifferent.
3. 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. Know Your Options: 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 IX coordinator without a survivor's permission. As of the effective date of this policy and subject to change, the following is the contact information for individuals who qualify as counselors and healthcare providers at TSU:

TSU Counseling Center
Main Campus
Floyd Payne Campus Center
Room 304
615-963-5611
www.tnstate.edu/counseling

TSU Student Health Services
Main Campus
Floyd Payne Student Center, Room 304
615-963-5291
studenthealthservices@tnstate.edu

C. Reporting to "Responsible Employees."

1. When a complainant tells a responsible employee about an incident of sexual violence, the complainant has the right to expect the University to respond promptly in a manner that is not deliberately indifferent.
2. A responsible employee must report to the Title IX coordinator all relevant details about the alleged sexual violence shared by the complainant, including the names of the complainant and respondent(s), any witnesses, and any other relevant facts, including the date, time and specific location of the alleged incident.
3. 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 complainant's consent or unless the complainant has also reported the incident to law enforcement.

4. The following offices are designated to receive complaints of sexual violence and sexual harassment at TSU, but the Title IX Coordinator can designate others in consultation with the General Counsel or his/her designee:

Office of Equity and Inclusion (Title IX Coordinator)
Main Campus
General Services Building, 2nd Floor (Access from Heiman St.)
615-963-7435
www.tnstate.edu/eeoaa

Student Conduct and Judicial Services
Main Campus
Floyd Payne Student Center, Room 103
615-963-2156
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 Title IX Coordinator:
 - a. President, Vice Presidents, Asst./Assoc. Vice Presidents
 - b. Deans, Academic Department Heads, and Unit Heads
 - c. Personnel in the Student Conduct Office within Student Affairs
 - e. Cabinet Members
 - f. Athletic Director
 - g. Officers of the TSU Police Department
 - h. Residence Life staff (RDs and Area Coordinators)
 - i. Title IX Coordinator and Deputy Coordinators
2. Before a complainant reveals any information to a responsible employee, the employee should ensure that the complainant understands the employee’s reporting obligations – and, if the complainant wants to maintain confidentiality, direct the complainant to confidential resources.

3. 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 obligations under this policy.** Such events may, however, inform the need for campus-wide education and prevention efforts, and the University will provide information about students’ Title IX rights at these events.

4. 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 Nashville
101 French Landing Drive
Nashville, TN 37228
615-259-9055 or 1-866-811-7473
www.sacenter.org

The National Sexual Assault Hotline
1-800-656-4673

NOTE: 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 IX Coordinator and will not do so without a complainant's written permission.

The TSU Counseling Center is staffed by professional licensed counselors who are not required to report any information about sexual violence, domestic violence or stalking. The Counseling Center is located at: Main Campus Student Success Center (LRC), 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 respondent(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 complainant.

- d. A complainant who speaks to a professional licensed counselor must understand that, if the complainant wants to maintain confidentiality, Tennessee State University will be unable to conduct an investigation into the particular incident or pursue disciplinary action against the respondent(s).
- e. Professional licensed counselors will assist the complainant 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.
- g. Professional licensed counselor must receive written permission from the complainant 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 IX Coordinator and the University Police if a complainant decides to file a complaint with Tennessee State University or report the incident to local law enforcement.

C. Reporting to University Police (Nottingham Act requirements)

1. Unless the complainant of a sexual assault does not consent to the reporting of an offense, the chief security officer or chief law enforcement officer of TSU 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 complainant 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, TSU's law enforcement agency shall lead the investigation. After notifying the local law enforcement agency, the TSU law enforcement 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 TSU shall not report the offense to the local law enforcement agency. T.C.A. § 49-7-2207.

- D. TSU will utilize good faith efforts to maintain the confidentiality of the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a formal complaint of Sexual Harassment, any complainant, any individual who has been reported to be the respondent of sex discrimination, any respondent, and any witness, except as may be permitted or required by federal or state law, or to carry out the purposes of this policy, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.
- E. TSU will utilize good faith efforts to maintain as confidential any supportive measures provided to the complainant or respondent, to the extent maintaining such confidentiality does not impair TSU's ability to provide the supportive measures.

VII. Tennessee State University's Response to a Report of Sexual Misconduct

A. Any person may report sex discrimination, including sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment), in person, by mail, by telephone, or by electronic mail, TSU's online reporting portal, using the contact information listed for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report. Such a report may be made at any time (including during non-business hours) by using the telephone number, online reporting portal, or electronic mail address, or by mail to the office address, listed for the Title IX Coordinator.

- B. Upon receipt of a report of sexual harassment or upon the filing of a formal complaint, the Title IX Coordinator will promptly contact the complainant and:
 - 1. Discuss the availability of supportive measures;
 - 2. Consider the complainant's wishes with respect to supportive measures;
 - 3. Inform the complainant of the availability of supportive measures with or without the filing of a formal complaint; and
 - 4. Explain the process for filing a formal complaint.
 - 5. 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.
- C. In cases where a formal complaint is filed, and an investigation is commenced, TSU will offer supportive measures to the respondent as well.
- D. In cases where a formal complaint is filed, TSU may remove a respondent from an education program or activity on an emergency basis only after conducting,

in consultation with the General Counsel or his/her designee and after conferring with appropriate personnel, an individualized safety and risk analysis, determining that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal, and providing the respondent with notice and an opportunity to challenge the decision immediately following the removal. If such emergency measures are undertaken, the student Respondent shall be entitled to the same due process as provided to Student Respondents placed on interim suspension under the Student Conduct Rule.

- E. TSU may place a non-student employee respondent on administrative leave during the pendency of a grievance process.

VIII. Role of Title IX Coordinator

- A. Tennessee State University's Title IX Coordinator is responsible for overseeing all Title IX 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 under this policy or TBR Guideline P-080 as adopted and implemented by Tennessee State University. The Title IX Coordinator's responsibilities include, but are not limited to:
 1. Investigation or oversight of investigations of allegations related to Title IX, in consultation with the General Counsel or his/her designee;
 2. Coordination over the effective implementation of supportive measures for both complainant and respondent.
 3. Coordination and oversight of educational programs including mandatory training for new students and employees and awareness campaigns for current students and employees;
 4. Coordination with University Police and local law enforcement on matters related to allegations related to sexual misconduct;
 5. Coordination and oversight of training for law enforcement, responsible employees, advocates, and anyone else involved in responding to, investigating, or adjudicating sexual misconduct;
 6. 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;
 7. 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 IX Coordinator or other designated official;

8. Coordination and oversight of training for professional counselors and others relating to the extent to which they may keep a report confidential;
 9. Coordination and oversight of training for investigators, decision makers including hearing officers or hearing committee members and decision makers for appeals, and any person who facilitates an informal resolution process 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. Such training must include training on the definition of sexual harassment, the scope of the recipient's education program or activity, how to conduct an investigation and grievance process, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias. Additionally, decision-makers must receive training on any technology to be used and on issues of relevance of questions and evidence, including when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, and annual training that satisfies the requirements of the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (20 U.S.C. § 1092(f)) and the federal regulations implementing those statutes, as amended. Investigators must also receive training on issues of relevance; and
 10. Attending appropriate training annually on topics related to responding to or investigating allegations of sexual misconduct in conformance with Title IX.
- B. The Title IX Coordinator, in consultation with the General Counsel or his/her designee, may designate deputies and investigators ("designees") to assist in carrying out any of the responsibilities related to implementing this policy.

IX. Investigation Requirements and Grievance 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. During any proceeding under this policy, TSU will treat Complainants and Respondents equitably by providing remedies to a Complainant where a determination of responsibility for Sexual Harassment has been made against the Respondent, and by following the grievance process set forth below before the imposition of any disciplinary sanctions or other actions that are not Supportive Measures against a Respondent.

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

D. Throughout the grievance process, Respondent is presumed not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.

E. Any grievance pursuant to these procedures will include an objective evaluation of all relevant evidence, including both inculpatory and exculpatory evidence. Credibility determinations may not be based on a person's status as a Complainant, Respondent, or witness.

E. TSU will apply a preponderance of the evidence standard throughout the grievance process.

F. The Title IX Coordinator, investigator, decision-maker, or any person designated to facilitate an informal resolution process, shall be free from any conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent.

G. Any timeframes provided in this policy are subject to good cause extension, which can include, but are not limited to, concerns related to the academic calendar, party or witness availability, and weather or other force majeure events.

G. Available Sanctions and Remedies. The possible disciplinary sanctions that TSU may implement following any determination of responsibility will vary based on the status of Respondent.

1. Employees: warning, reprimand, suspension, demotion, termination, or other sanction as deemed appropriate.
2. Students: Possible sanctions for students are found in TSU's Student Conduct Rule.

H. Formal Complaint. Only a Complainant or the Title IX Coordinator may file a formal complaint.

1. Upon receipt of the formal complaint, TSU will provide the parties written notice of the allegations potentially constituting sexual harassment, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview. Sufficient details include the identities of the parties involved in the incident, if known, the conduct allegedly constituting sexual harassment, and the date and location of the alleged incident, if known.
2. In addition, the written notice to the parties shall include the following statements:
 - a. The respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility will be made at the conclusion of the grievance process;
 - b. The parties may have an advisor of their choice, who may be, but is not required to be, an attorney; however, the advisor may not participate in any investigative interview or proceeding other than to render advice to the party or to cross examine the other party or witnesses during the live hearing;

- c. The parties may inspect and review evidence; and
 - d. Identifies any provision in its codes of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.
2. If, in the course of an investigation, TSU decides to investigate allegations about the Complainant or Respondent that are not included in the original written notice discussed above, TSU will provide written notice of the additional allegations to the parties whose identities are known.
3. Dismissal of a formal complaint:
- A. Mandatory Dismissal. TSU will investigate the allegations in a formal complaint. In consultation with the General Counsel or his/her designee, TSU must dismiss the formal complaint with regard to any alleged conduct that:
 - a. Would not constitute Sexual Harassment under this policy, even if proved;
 - b. Did not occur in TSU's education program or activity; or
 - c. Did not occur against a person present in the United States at the time of the alleged conduct.

If appropriate, the Title IX Coordinator will forward allegations of misconduct dismissed under this section to the appropriate administrative office for review and, if appropriate, additional action under other University rules and procedures may be taken.

- B. Permissive Dismissal. In consultation with the General Counsel or his/her designee, TSU may dismiss the Formal Complaint or any allegations therein, 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 therein;
 - b. Respondent is no longer enrolled or employed by TSU; or
 - c. Specific circumstances prevent TSU from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations therein.

If appropriate, the Title IX Coordinator will forward allegations of misconduct dismissed under this section to the appropriate administrative office for review

and, if appropriate, additional action under other University rules and procedures may be taken.

- C. Following a mandatory or permissive dismissal set forth above, the Title IX Coordinator must promptly send written notice of the dismissal and reason(s) therefore simultaneously to the parties.
4. Consolidation of Formal Complaints. TSU may consolidate formal complaints as to allegations of Sexual Harassment against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one party against the other party, where the allegations of Sexual Harassment arise out of the same facts or circumstances.
5. Investigation of a Formal Complaint. When investigating a formal complaint and throughout the grievance process, the following requirements apply:
 - A. Burden of Proof. The burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rests on TSU and not on the parties;
 - B. Prohibition on use of Privileged Documents. TSU may 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 or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless TSU obtains that party's voluntary, written consent to do so for a Grievance Process under this section.
 - C. TSU will provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence, and will not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence.
 - D. Use of an Advisor. The parties are permitted to have others present during any Grievance Proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney. TSU does not place any limits on the choice or presence of advisor for either the Complainant or Respondent in any meeting or Grievance Proceeding. Except for participation in cross-examination in a live hearing, the advisor's role in any other meeting or proceeding shall be limited to an advisor role only and may not otherwise participate in the meeting or proceedings.
 - E. Notice to Parties. TSU will provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of

all hearings, investigative interviews, or other meetings with a party, with sufficient time for the party to prepare to participate.

- F. Access to Evidence. TSU will allow both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, including the evidence upon which TSU does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence, whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation.

Prior to completion of the investigative report, the Investigator will send to each party and the party's advisor (if any), the evidence subject to inspection and review in an electronic format or a hard copy. The parties will have ten (10) business days to submit a written response, which the Investigator will consider prior to completion of the investigative report. TSU must make all such evidence subject to the parties' inspection and review available at any hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination.

- G. Final Investigative Report. The Investigator will create an investigative report that fairly summarizes relevant evidence, including 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. The report shall be forwarded to the General Counsel or his/her designee for legal sufficiency review. At least ten (10) days prior to a hearing or other time of determination regarding responsibility, send to each party and the party's advisor (if any), the investigative report in an electronic format or a hard copy, for their review and written response.

- H. Additional investigation procedures include:

1. Investigations under this policy shall be conducted in consultation with the General Counsel or his/her designee in the same manner prescribed in TBR Guideline P-080 as adopted and implemented by Tennessee State University.
2. The Title IX Coordinator may appoint one of the Deputy Title IX Coordinators a qualified, sufficiently trained person to investigate the allegations made in the complaint.
3. Only one person shall be identified as the investigator, though the investigator may have a second person present during interviews to take notes.

4. Investigations shall be conducted by officials who do not have a conflict of interest or bias for or against the complainant or respondent.
5. 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, General Counsel, or appropriate designee. 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 or designee 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.
6. 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.
7. The investigation shall include interviews with both the Complainant and Respondent, unless either declines an interview.
8. Investigative interviews can be conducted in-person, by telephone, or virtually, as determined by the investigator.
9. 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.
10. TSU will not limit the choice of advisor for either the complainant or respondent.
11. 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.
12. The investigation shall include the gathering and reviewing of any documentary, electronic, physical, or other type of relevant evidence.
13. The investigator is expected to request a list of relevant witnesses and evidence from Complainant and Respondent and take such into consideration.
14. The investigator shall not consider any evidence about the complainant's prior sexual conduct with anyone other than the respondent. 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.

XI. Timeframe for Conducting the Investigation

1. Every reasonable effort shall be made to conclude the investigation 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 and that the investigator will notify the parties in writing of the investigative report 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 IX 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.

XII. Institutional Hearing

- A. At least ten (10) days after the completion of the investigative report and distribution to the parties and their advisors (if any), TSU will convene a live hearing.
- 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.
- D. 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.

- E. Every reasonable effort shall be made to conclude the hearing and resolve the appeal, including any appeal to the Vice President or designee, within forty-five (45) days following the completion of the investigative report, absent good cause.
- F. The hearing officer may allow a temporary delay of the grievance process or the limited extension of time frames for good cause with written notice to the complainant and the respondent of the delay or extension and the reasons for the action. 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.

1. During the hearing, the decision-maker must observe the following procedures:

b. Location of Hearing. Live hearings pursuant to this section may be conducted with all parties physically present in the same geographic location or, at TSU'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.

c. Separation of Parties. At the request of either party, the Hearing Officer will provide for the live hearing to occur 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.

d. At least seventy-two (72) hours prior to a live hearing, TSU 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 expected to present at the hearing;
- 3. The right to request a copy of the investigative file; and

4. The right to request copies of all documents, copies of all electronically stored information, and access to tangible evidence that TSU has in its possession, custody, or control and may use to support claims or defenses.
- e. Cross-examination. Each party's advisor will be permitted to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility. Cross-examination at the live hearing must be conducted directly, orally, and in real time by the party's advisor and never by a party personally. If a party does not have an advisor present at the live hearing, TSU will provide an advisor of its choice to conduct cross-examination on behalf of that party without fee or charge to that party.
- f. Relevance. Only relevant questions may be asked of a party or witness on either direct or cross examination. Before a Complainant, Respondent, or witness answers a question, the decision-maker must first determine whether the question is relevant. The decision-maker must explain any decision to exclude a question as not relevant.
- g. Complainant's Prior Sexual Behavior. Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant, except as follows:
 - (1) If 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
 - (2) 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.
- h. Exclusion of all evidence not subject to cross-examination. If a party or witness does not submit to cross-examination at the live hearing, the decision-maker(s) must not rely on any statement of that party or witness in reaching a determination regarding responsibility; provided, however, that the decision-maker(s) cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions.
- i. Recording of Hearing. TSU will create an audio or audiovisual recording or transcript of any live hearing and make it available to the parties for inspection and review.

G. Determination Regarding Responsibility.

1. The decision-maker(s) must issue a written determination regarding responsibility using a preponderance of the evidence standard.
2. The written determination must include the following:
 - a. Identification of the allegations potentially constituting Sexual Harassment;
 - b. A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
 - c. Findings of fact supporting the determination;
 - d. Conclusions regarding the application of TSU's sexual misconduct or other applicable policy to the facts;
 - e. A statement of, and rationale for, the result as to each allegation, including: a determination regarding responsibility; any disciplinary sanctions TSU imposes on the respondent; whether remedies designed to restore or preserve equal access to TSU's education program or activity will be provided by TSU to the complainant; and the procedures and permissible bases for the Complainant and Respondent to appeal.
3. The written determination must be provided to the parties simultaneously. The determination regarding responsibility becomes final either on the date that TSU provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.
4. If remedies were provided in the written determination, the Title IX Coordinator is responsible for effective implementation of any remedies.
5. Absent good cause, within five (5) 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.

XIII. Appeal of Hearing Decision

- A. Either party may appeal a determination of responsibility or the dismissal of a formal complaint for any allegations therein. The decision-maker for the appeal will be the applicable Vice President (or designee as determined by the President or General Counsel).
- B. If either party chooses to appeal, the party shall notify the investigator in writing of the decision to appeal within five (5) business days of receipt of the determination.
- B. If a written request for appeal is not received within five (5) 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) a procedural irregularity affecting the outcome of the matter, 2) new evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter, and/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 of the matter.
- D. For any appeal made under this policy, the Title IX Coordinator or designee will:
 - 1. Notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties;
 - 2. Ensure that the decision-maker(s) for the appeal is not the same person as any investigator(s) or the decision-maker(s) that reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator;
 - 3. Ensure that the decision-maker(s) for the appeal meets the training requirements; and
 - 4. The decision-maker for appeal will:
 - a. Give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome;
 - b. Issue a written decision describing the result of the appeal and the rationale for the result; and
 - c. Provide the written decision simultaneously to both parties.

- D. The Vice President or designee as decision-maker for appeal 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.

XIV. Informal Resolution

- A. At any time prior to reaching a determination regarding responsibility on a Formal Complaint, with the voluntary, written consent of the parties, TSU may facilitate an informal resolution process that does not involve a full investigation and adjudication.
 - 1. Prior to initiating an informal resolution process, the Title IX Coordinator or designee will provide to the parties a written notice disclosing:
 - a. the allegations;
 - b. the requirements of the informal resolution process including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations;
 - c. that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint; and
 - d. any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared;
 - 2. Informal resolution is not available to resolve allegations that an employee sexually harassed a student.
 - 3. Absent good cause or agreement by the parties, any attempt to informally resolve the Formal Complaint must be completed within thirty (30) business days after initiating a request for the informal resolution, at which time investigation/adjudication will resume.

XVII. Sexual Misconduct: Rights and Options

- A. Regardless of whether a complainant elects to pursue a criminal complaint, TSU will take efforts to assist and notify complainant and respondent of her/his rights as a member of TSU.
- B. Complainants 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 complainant's home or residence hall, the complainant should not rearrange and/or clean up anything. It is important for the complainant to seek medical attention

immediately so that the complainant 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 complainant or the complainant’s clothing.

- D. TSU 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 Equity and Inclusion or successor office. 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 911 call capability only), changing classroom location or allowing a student to complete assignments from home, etc.
- E. 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. TSU 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. Complainant 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) 963-5300 (telephone).

XVIII. Resources

The resources listed below are not exhaustive or limited to those who wish to make an official report or participate in a formal complaint, police investigation or criminal prosecution. However, in cases where a complainant wishes to maintain complete confidentiality, the complainant should review carefully the section above related to the limits on Tennessee State University’s ability to maintain confidentiality.

A. On Campus Resources

TSU Counseling Center	615-963-5611 www.tnstate.edu/counseling/	Floyd Payne Campus Center, Room 304, Main Campus
TSU Campus Health Services	615-963-5291 Studenthealthservices@tnstate.edu www.tnstate.edu/campus_life/healthservices.aspx	Floyd Payne Campus Center, Room 304, Main Campus

University Police	615-963-5171 www.tnstate.edu/police/	Queen Washington Bldg., Main Campus
Office of Equity and Inclusion	615-963-7435 www.tnstate.edu/equity	General Services Building, 2 nd Floor, Main Campus
TSU Asst. Dean of Students/ Judicial Affairs Officer	615-963-5940 www.tnstate.edu/mediation/	Floyd Payne Student Center, 1 st Floor, Room 103, Main Campus

Additionally, Tennessee State University has a Sexual Assault Response Team (SART) as an additional resource for the campus community.

B. In the Nashville Metropolitan Area

Metro Nashville Police Davidson County Sheriff		911 or 911 or
Nashville General Hospital at Meharry (capable of administering rape kits for use in criminal prosecutions)	1818 Albion Street Nashville, TN 37208	615-341-4000
Sexual Assault Center of Nashville	101 French Landing Dr., Nashville, TN 37228	615-259-9055 http://www.sacenter.org
Tennessee Coalition to End Domestic & Sexual Violence	2 International Plaza Dr. , Ste. 425, Nashville, TN 37217	615-386-9406 http://tncoalition.org
The National Sexual Assault Hotline	24-hour Crisis Line	1-800-656-4747
Domestic Violence Intake Center (Protective Orders)		http://www.tncourts.gov/programs/self-help-center/forms/order-protection-forms

XIX. Retaliation

- A. Tennessee State University, its officers, employees, or agents are strictly prohibited from retaliating, intimidating, threatening, or otherwise discriminating against any individual for the purpose of interfering with any right or privilege secured by Title IX or this policy, or because the individual made a report or complaint, testified, assisted, or participated or refused to

participate in any manner in an investigation, proceeding, or hearing, or otherwise exercising their rights or responsibilities under any provision of this policy. Retaliation will result in disciplinary measures, up to and including termination or expulsion.

- B.** The exercise of rights protected under the First Amendment does not constitute retaliation.

- C.** Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding under this Policy does not constitute retaliation prohibited by this policy, provided, however, that a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.

XX. Recordkeeping

- A.** The recordkeeping requirements in this policy supersede the record keeping requirements in other TSU policy.

- B.** TSU will retain the following records for a period of seven years:
 - 1. Each Sexual Harassment investigation, including any determination regarding responsibility and any recording or transcript of any live hearing, any disciplinary sanctions imposed on the Respondent, and any remedies provided to the Complainant designed to restore or preserve equal access to TSU's education program or activity;

 - 2. Any appeal and the result therefrom;

 - 3. Any informal resolution and the result therefrom;

 - 4. All materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process. TSU will make these training materials publicly available on its website.

 - 5. For each response to actual knowledge of Sexual Harassment, TSU must create, and maintain for a period of seven (7) years, records of any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment.
 - a. In each instance, TSU must document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to TSU's education program or activity.

- b. If TSU does not provide a Complainant with Supportive Measures, then it must document the reasons why such a response was not clearly unreasonable in light of the known circumstances.

- c. The documentation of certain bases or measures does not limit TSU in the future from providing additional explanations or detailing additional measures taken.

XXI. Interpretation

In consultation with the General Counsel or his/her designee, the Title IX 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.

XXI. Citation of Authority for Policy

Title IX of the Education Amendments of 1972, Section 485(f) of the HEA, as amended by Section 304 of the Violence Against Women Reauthorization Act of 2013; 34 CFR § 668.41, § 668.46, and Appendix A to Subpart D of Part 668. TBR Policy: Sexual Misconduct: 6:03:00:00.

Adopted: August 14, 2020