

APPENDIX C
PROCEDURES FOR INVESTIGATING AND RESOLVING ALLEGATIONS OF PROHIBITED CONDUCT
WHEN THE RESPONDENT IS A STUDENT

The University of Tennessee is committed to creating and maintaining a safe and non-discriminatory learning, living, and working environment free from Sexual Misconduct, Relationship Violence, Stalking, and Retaliation (collectively, “Prohibited Conduct”). Prohibited Conduct is defined in the University’s Policy on Sexual Misconduct, Relationship Violence, Stalking, and Retaliation (the “Policy”).¹

Disciplinary proceedings² relating to Prohibited Conduct when the Respondent is a student will be handled by the University in accordance with the Student Code of Conduct (“Code”), as modified and/or clarified by this Appendix C in compliance with Clery Act regulations, 34 C.F.R. § 668.46. Page five of this appendix C contains a graphical summary of the student conduct process under the Code. A copy of the Code may be found at studentconduct.utk.edu.

HOW TO FILE A COMPLAINT OF PROHIBITED CONDUCT

Prohibited Conduct may be reported to any Title IX Official identified in Section 2 of the Policy.

TRAINING FOR UNIVERSITY OFFICIALS

Disciplinary proceedings relating to Prohibited Conduct will be conducted by persons who, at a minimum, receive annual training on the issues related to Prohibited Conduct, and on how to conduct an investigation and hearing process that protects the safety of Complainants and promotes accountability.

CONFLICT OF INTEREST OR BIAS OF UNIVERSITY OFFICIALS

Disciplinary proceedings relating to Prohibited Conduct will be conducted by persons who do not have a conflict of interest or bias for or against the Complainant or the Respondent.

PROMPT, FAIR, AND IMPARTIAL PROCESS

Disciplinary proceedings will be conducted in a prompt, fair, and impartial manner from the initial investigation to the final result.

STANDARD OF PROOF

The standard of proof used in disciplinary proceedings is the preponderance of the evidence, i.e., whether it is more likely than not that the Respondent violated the Standards of Conduct by engaging in Prohibited Conduct. In a University disciplinary proceeding, the University has the burden of proving that Prohibited Conduct occurred. It is not a Respondent’s burden to prove that Prohibited Conduct did not occur.

DISCIPLINARY PROCEEDINGS

Sections V-VIII of the Code describe the types of disciplinary proceedings that may be used in cases of Prohibited Conduct, including the steps, decision-making process, and how the University determines which type of proceeding to use. Disciplinary proceedings generally have three steps, unless a Request for Limited Action³ is granted:

¹ Capitalized terms have the same meaning in the Policy and Appendix C.

² “Disciplinary proceeding” means all activities related to the University’s non-criminal resolution of a report to the University of Prohibited Conduct, including, but not limited to, fact-finding investigations, formal or informal meetings, and hearings. “Disciplinary proceeding” does not include communications and meetings between Title IX Officials and a Complainant concerning interim or protective measures to be provided to a Complainant.

³ See Section 2.5.2.4 of the Policy.

Step	Description	Policy Reference	Anticipated Timeline
Title IX Assessment	An initial assessment by the Title IX Coordinator, including implementation of interim protective and remedial measures	Policy, Section 2.5.2.3	Within five (5) business days of Title IX Coordinator’s receipt of report of Prohibited Conduct
Student Conduct Process: Initial Stages/Investigation	OSCCS ⁴ conducts a prompt, thorough, and equitable investigation in a manner appropriate in light of the circumstances of the case, which will typically include interviews with the Complainant, the Respondent, and any witnesses. As part of the investigation, OSCCS will provide an equal opportunity for the Complainant and the Respondent to be heard, to submit information, and to identify witnesses and other evidence. The interviews will be supplemented by the gathering of any physical, documentary, or other evidence, as appropriate and available.	Code, Sections 6.2, 6.6, 6.7, and 7.4.1	Within sixty (60) business days after OSCCS begins an investigation
Student Conduct Process: Resolution	Allegations of Prohibited Conduct may be resolved through: <ul style="list-style-type: none"> • a Resolution Agreement; • a Formal Hearing, including appeals; • an Alternative Resolution; • a No Action Determination; or • another type of resolution outlined in Section 7.4 of the Code 	Code, Sections 7.1-7.4	Within thirty (30) business days of the issuance of a Notice of Allegations, if issued ⁵

ANTICIPATED TIMELINES

Although the University strives to adhere to the timelines described above, in each case the University will balance the need to complete a prompt disciplinary proceeding with the need to conduct a thorough disciplinary proceeding that complies with due process and, when applicable the UAPA. Thus, the actual time to complete a disciplinary proceeding may require a reasonable adjustment of the time frames in these procedures depending on many factors, including, without limitation: the complexity of the allegations; the complexity of the disciplinary proceeding; the severity and extent of the alleged misconduct; the number of parties, witnesses, and the types of other evidence (e.g., forensic evidence) involved; the availability of the parties, witnesses, and evidence (e.g., forensic evidence); a request by a Complainant to delay the disciplinary proceeding or conduct a disciplinary proceeding at a slower pace; the effect of a concurrent criminal investigation or proceeding; a request by a district attorney to delay interviewing a witness; a witness’ compliance with the instruction of a district attorney not to participate in a University disciplinary proceeding; intervening University holidays, breaks, or other closures; and/or other unforeseen circumstances. In the event that the need arises to significantly adjust the timelines described above or those previously communicated to the Complainant and the Respondent for good cause,

⁴ Investigations of reports of Prohibited Conduct are usually performed by OSCCS. However, for good cause, the Title IX Coordinator may select an investigator(s) external to OSCCS, provided that the investigator has specific training and experience investigating allegations of Prohibited Conduct. Any investigator(s) chosen to conduct the investigation must be impartial and free of any conflict of interest. The investigator(s) may be a University employee, a team of University employees, an external investigator(s) engaged to assist the University, or a team of investigators that pairs an external investigator(s) with a University employee.

⁵ This timeline does not apply if a Respondent exercises the right to have a hearing conducted under state law, the Uniform Administrative Procedures Act, Tennessee Code Annotated § 4-5-101 *et seq.* (“UAPA”). If a Respondent exercises a right to a UAPA hearing, then an administrative judge will be appointed by the University’s Agency Head typically within five (5) business days of the Respondent’s request for a UAPA hearing. The timelines for a UAPA hearing are governed by the UAPA. The UAPA hearing typically lasts a minimum of four (4) months.

the University will notify the Complainant and the Respondent in writing of the reason for the delay and the expected adjustment in timelines.

RIGHT TO AN ADVISOR

The Complainant and the Respondent have the right to be assisted by an advisor during all stages of a disciplinary proceeding. The University provides the Complainant and the Respondent with the same opportunities to have others present during a University disciplinary proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice. The University will not limit the choice of an advisor or the advisor's presence for either the Complainant or the Respondent in any meeting or disciplinary proceeding; however, Section 5.3.2 of the Code explains the limitations on the role of an advisor, which apply equally to the Complainant and the Respondent.

SIMULTANEOUS NOTIFICATION OF RESULTS

The Complainant and the Respondent have the right to receive a copy of a notice of an initial, interim, or final decision, or a change in such a decision, issued by the Vice Chancellor for Student Life, OSCCS, a Student Life Hearing Officer, the Student Conduct Board, Appellate Board (e.g., Notice of Allegations, Notice of Decision, Notice of Final Decision), simultaneously with the other party's receipt of a copy of the notice of the decision, to the extent allowed by law. Notification of an initial, interim, or final decision must include any sanctions imposed by the University and the rationale for the decision and sanctions (if any).

INTERIM PROTECTIVE AND REMEDIAL MEASURES

Section 2.6 of the Policy describes interim protective and remedial measures that the University may implement while the University assesses, investigates, and resolves a report of Prohibited Conduct.

In order to be proactive in preventing Prohibited Conduct, following a report of Prohibited Conduct that has a substantial nexus to the activities of a registered student organization (or its members) or another University-affiliated student group, the Title IX Coordinator may coordinate with the Division of Student Life to provide the leaders of the registered student organization or University-affiliated student group and/or active members in good standing of a registered student organization or University-affiliated student group with prevention and awareness programming concerning Prohibited Conduct (e.g., programming about bystander intervention; programming about Consent) at the University's expense. Such efforts should not be interpreted as a University finding that the student organization or group engaged in wrongful conduct.

POSSIBLE SANCTIONS

Following a final determination under the Code that a student committed Prohibited Conduct (e.g., after appeals have been exhausted), the University will take prompt and effective steps reasonably calculated to end the misconduct, prevent the misconduct from recurring, and address its effects. Section IX of the Code identifies the possible sanctions that the University may impose if, after the conclusion of the student conduct process, a Respondent is found responsible for engaging in Prohibited Conduct. Possible sanctions include: warning; disciplinary probation; deferred suspension; suspension; expulsion; withholding of degree; disciplinary probation for student organizations; social probation for student organizations; revocation or suspension of University registration for student organizations; educational activities; restitution; supervised work/service; loss or restriction of privileges; University housing reassignment or removal; and/or mandatory education.

ALTERNATIVE RESOLUTION

Section 7.3 of the Code provides that, at any time during the student conduct process, allegations against a Respondent may be resolved through an alternative resolution. An alternative resolution is a resolution that is reached through a process and/or by a sanction or restriction not described in the Code. Before proposing an alternative resolution in a case involving Prohibited Conduct, OSCCS shall consult with the Title IX Coordinator and determine whether an alternative resolution would be appropriate based on the facts and circumstances of the case, and, if so, what type of alternative resolution process should be used. The Title IX Coordinator will ensure that any proposed alternative resolution is consistent with the University's Title IX obligations.

Examples of alternative resolution processes that may be proposed by OSCCS include but are not limited to mediation, facilitated dialogue, conflict coaching, and restorative justice. The process of trying to reach an alternative resolution is voluntary (i.e., neither the Respondent nor a Complainant is required to participate). At any time during an alternative resolution process, either the Complainant or the Respondent may request that the process cease and the investigation and resolution process continue.

An Alternative Resolution Agreement is a written agreement that confirms an agreement to resolve the allegations against the Respondent through an alternative resolution. To be valid, an Alternative Resolution Agreement shall in all cases be signed by OSCCS and the Respondent, and shall include a waiver of the Respondent's right, if any, to have a Formal Hearing on the allegations. Prior to the execution of an Alternative Resolution Agreement, if a Complainant has not participated with OSCCS in the discussion of an alternative resolution, then OSCCS will provide the Complainant with an opportunity to provide a timely objection to the proposed alternative resolution. In appropriate cases, OSCCS may request the Complainant to sign an Alternative Resolution Agreement and determine that the Alternative Resolution Agreement is not effective without the Complainant's signature. Neither the Respondent nor the Complainant may revoke or appeal an Alternative Resolution Agreement.

If an Alternative Resolution Agreement is not reached, then the student conduct process will proceed, and the allegations against the Respondent will be resolved through one of the other resolution methods in the Code.

COMPLAINANT'S RIGHT TO APPEAL A NO ACTION DETERMINATION

If a disciplinary proceeding concludes with OSCCS making a final determination that no action will be taken with respect to a report of Prohibited Conduct, then the Complainant may appeal that determination in accordance with Section 7.4.1 of the Code. Under the Code, a Complainant who is informed by OSCCS of a no action determination may appeal the decision to OSCCS, in writing, within five (5) business days of the date that OSCCS transmitted notice of the no action determination to the Complainant. The decision of OSCCS to affirm the no action determination is final and may not be appealed. Respondent appeal rights and procedures for appealing decisions are located in Sections 7 and 8 of the Code.

UNIFORM ADMINISTRATIVE PROCEDURES ACT

Chapter 1720-1-5 of the Rules of the University of Tennessee (<https://publications.tnsosfiles.com/rules/1720/1720-01/1720-01-05.20180524.pdf>) sets forth the University's procedures for conducting a contested case hearing pursuant to the Uniform Administrative Procedures Act, Tennessee Code Annotated, § 4-5-301 *et seq.* In a case involving alleged Prohibited Conduct, the administrative judge or hearing officer must modify those procedures when required to comply with federal law, including without limitation, Title IX, the Clery Act, and FERPA.

STUDENT CONDUCT & COMMUNITY STANDARDS (SCCS) STUDENT CONDUCT PROCESS

When a student faces an alleged (nonacademic) violation, the below process is followed.

