

**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").<sup>1</sup>

Disciplinary proceedings<sup>2</sup> 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. A copy of the Code is included in this Appendix C.

**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.

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<sup>1</sup> Capitalized terms have the same meaning in the Policy and Appendix C.

<sup>2</sup> "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 accommodations or protective measures to be provided to a Complainants.

**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 Action<sup>3</sup> is granted:

Step	Description	Policy Reference	Anticipated Timeline
<b>Title IX Assessment</b>	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
<b>Student Conduct Process: Initial Stages/Investigation</b>	SCCS <sup>4</sup> 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, SCCS 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 SCCS begins an investigation
<b>Student Conduct Process: Resolution</b>	Allegations of Prohibited Conduct may be resolved through: <ul style="list-style-type: none"> <li>• a Resolution Agreement;</li> <li>• a Formal Hearing, including appeals;</li> <li>• an Alternative Resolution;</li> <li>• a No Action Determination; or</li> <li>• another type of resolution outlined in Section 7.4 of the Code</li> </ul>	Code, Sections 7.1-7.4	Within thirty (30) business days of the issuance of a Notice of Allegations, if issued <sup>5</sup>

<sup>3</sup> See Section 2.5.2.4 of the Policy.

<sup>4</sup> Investigations of reports of Prohibited Conduct are usually performed by SCCS. However, for good cause, the Title IX Coordinator may select an investigator(s) external to SCCS, 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.

<sup>5</sup> 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 law judge will be appointed by the University's Agency Head 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.

### **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, 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, SCCS, 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).

### **PREVENTATIVE, PROTECTIVE, AND REMEDIAL MEASURES**

Section 2.6 of the Policy describes interim protective and remedial measures that the University may offer to a Complainant to prevent the recurrence of Prohibited Conduct, deter Retaliation, and remedy the effects of Prohibited Conduct through reasonable support services, accommodations, and other assistance.

After the conclusion of a disciplinary proceeding, the University also may implement protective and remedial measures, including: issuing a no-contact directive to the Respondent; providing medical and counseling services to the Complainant (for a student Complainant); exploring changes in living, transportation, dining, and working arrangements for the Complainant and the Respondent; providing an escort to ensure that the Complainant can move safely between classes and activities; exploring changes in class and extracurricular schedules, including adjustments so that the Complainant and the Respondent do not share the same classes; assisting the Complainant in communicating with faculty; providing academic support for the Complainant, including tutoring; and exploring options for re-taking a course, dropping a course, or withdrawing for a semester without financial or academic penalty.

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 SCCS may propose to the Respondent and the Complainant that they attempt to resolve the allegations against the Respondent through an alternative resolution process. In cases involving Prohibited Conduct, however, the Title IX Coordinator (rather than SCCS) will determine whether exploration of an alternative resolution is appropriate (including a determination whether the Complainant has been pressured by others to pursue alternative resolution). If the Title IX Coordinator determines that the exploration of an alternative resolution is appropriate, then the Title IX Coordinator will serve as an impartial facilitator (or designate another trained employee to do so) so that the Complainant and the Respondent do not have direct contact (unless both parties consent to direct contact). The University will not compel a Complainant or a Respondent to participate in an alternative resolution process. 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. The Title IX Coordinator will not approve an alternative resolution unless the Complainant and the Respondent agree to the alternative resolution in writing as provided in Section 7.3.3 of the Code. The Title IX Coordinator will ensure that any proposed alternative resolution

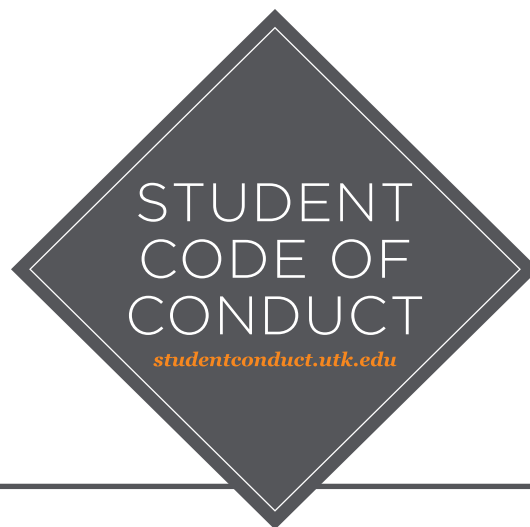
is consistent with the University's Title IX obligations. If no alternative resolution is reached, then the University will continue with the investigation and resolution process. The Title IX Coordinator will not use mediation to resolve reports of Sexual Assault.

#### **COMPLAINANT'S RIGHT TO APPEAL A NO ACTION DETERMINATION**

If a disciplinary proceeding concludes with SCCS 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 to the Title IX Coordinator, in writing, within five (5) business days of the date that SCCS transmitted notice of the no action determination to the Complainant. The Title IX Coordinator will provide the Respondent with a copy of the Complainant's appeal and an opportunity to respond to the appeal within five (5) business days. A decision of the Title IX Coordinator to affirm the no action determination is final and may not be appealed.

#### **UNIFORM ADMINISTRATIVE PROCEDURES ACT**

Chapter 1720-1-5 of the Rules of the University of Tennessee (<http://publications.tnsosfiles.com/rules/1720/1720-01/1720-01-05.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 law judge or hearing officer must modify those procedures when required to comply with federal law, including without limitation, Title IX and the Clery Act.



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## STUDENT CONDUCT & COMMUNITY STANDARDS (SCCS)

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***The University of Tennessee has a Student Code of Conduct, which was significantly updated in 2017. Students are responsible for conducting themselves in a lawful manner and in compliance with the guidelines set forth in the Code. This document is meant to serve as an overview of the Student Code of Conduct; please visit [studentconduct.utk.edu](http://studentconduct.utk.edu) or call the Office of Student Conduct (865-974-3171) for more information.***

### **STANDARDS OF CONDUCT**

Students are prohibited from engaging in the following types of misconduct:

*The full Standards of Conduct can be found in the Student Code of Conduct on page 5.*

1. Academic Dishonesty
2. Providing False Information
3. Misuse of Information in Connection with University Investigation or Hearing
4. Misconduct Related to Records or Identification
5. Causing Harm to Others
6. Harassment
7. Sexual Misconduct, Relationship Violence, Stalking, and/or Retaliation
8. Invasion of Privacy
9. Theft, Unauthorized Use, and/or Vandalism of Private or Public Property
10. Hazing
11. Disorderly Conduct
12. Lewd, Indecent, or Obscene Conduct
13. Engaging in Imminent Lawless Action
14. Misconduct Related to Fire Safety
15. Unauthorized Use or Possession of University Keys, Access Cards, and Identification
16. Misconduct Related to Information Technology
17. Unauthorized Weapon Possession on University Property or in Connection with University Activity
18. Alcohol Related Misconduct on University Property or in Connection with University Activities
19. Alcohol Related Conduct Prohibited by Law
20. Providing Alcohol to Underage Person(s)
21. Conduct Related to Drugs and Drug Paraphernalia if Prohibited by Law
22. Failure to Fulfill a University Financial Obligation
23. Failure to Respond, Comply, or Identify of Oneself
24. Failure to Appear at a University Hearing
25. Violation of Interim Administrative Actions, Disciplinary Sanctions, or Condition of Re-Enrollment
26. Obstruction or Disruption of University Activity
27. Violation of University Policy or Rule
28. Act Prohibited by Law
29. Attempted Violation; Accessory to Violation
30. Retaliation

### **SANCTIONS FOR VIOLATING THE STANDARDS OF CONDUCT**

The purposes of sanctions are to educate, promote personal and professional development, discourage violations, and protect the University community.

*The full explanation of the Administrative and Developmental Sanctions may be found in the Student Code of Conduct on page 19.*

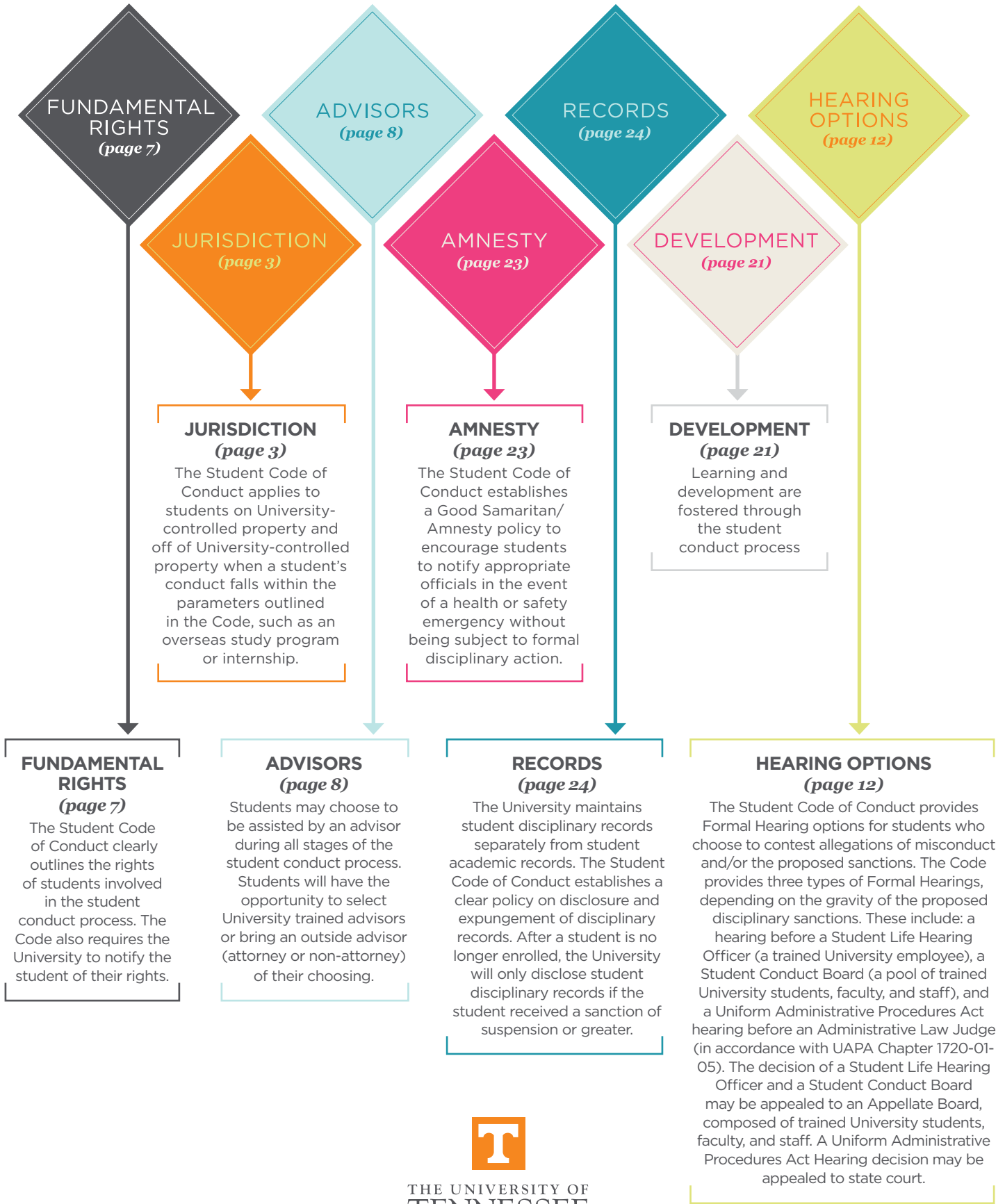
#### **ADMINISTRATIVE SANCTIONS**

1. Warning
2. Disciplinary Probation
3. Deferred Suspension
4. Suspension
5. Expulsion
6. Withholding of Degree
7. Revocation of Degree
8. Student Organizations
  - Disciplinary Probation for Student Organizations
  - Social Probation for Student Organizations
  - Revocation or Suspension of University Registration

#### **DEVELOPMENTAL SANCTIONS**

1. Educational Activities
2. Restitution for Loss, Damage, and/or Injury
3. Supervised Work/Service
4. Loss or Restriction of Privileges
5. University Housing Reassignment or Removal
6. Mandatory Education

The major changes to the Student Code of Conduct include the following:



THE UNIVERSITY OF  
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