

Policy on Sexual Misconduct, Relationship Violence, Stalking, and Retaliation

August 20, 2018

titleix.utk.edu



SECTION 1 INTRODUCTION

1.1 OVERVIEW

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 will not be tolerated and will be grounds for disciplinary action up to and including expulsion from the University and termination of employment.

The primary purposes of this Policy on Sexual Misconduct, Relationship Violence, Stalking, and Retaliation (“Policy”) are to: (1) define, eliminate, prevent, and remedy the effects of Prohibited Conduct; (2) identify care, support, and reporting options for students and employees; (3) explain the obligations of employees to report Prohibited Conduct to the University; and (4) identify the procedures the University will follow to thoroughly, equitably, and promptly investigate and resolve reports of Prohibited Conduct. Additional information about the University’s procedures and training and prevention programs relating to Prohibited Conduct can be found online at titleix.utk.edu.

1.2 SCOPE AND APPLICABILITY

1.2.1 Individuals Covered by This Policy

This Policy applies to the conduct of and protects:

- Students of The University of Tennessee, Knoxville and students of The University of Tennessee Institute of Agriculture, as defined in the University’s Student Code of Conduct;
- Employees and affiliates of the University;¹ and
- University contractors and third parties participating in a University education program or activity.

This Policy applies regardless of the Complainant’s or the Respondent’s sex, sexual orientation, gender identity, or gender expression. Prohibited Conduct can occur between strangers or acquaintances and can occur between people of the same or of different sexes, sexual orientations, gender identities, or gender expressions.

- The “Complainant” is the person who may have been subjected to Prohibited Conduct, regardless of whether that person makes a report or seeks action under this Policy.
- The “Respondent” is the person who has been accused of committing Prohibited Conduct.

Those terms do not imply pre-judgment concerning whether Prohibited Conduct occurred. Other key terms used in this Policy are defined in other places in this Policy and are capitalized throughout this Policy.

1.2.2 Jurisdiction

With respect to employees and other non-students, this Policy applies to conduct which: (i) occurs on University-controlled property; (ii) occurs in the context of a University education program or activity, including University employment; and/or (iii) occurs outside the context of a University education program or activity, but has continuing adverse effects or creates a sexually hostile environment on University-controlled property or in any University education program or activity, including University employment.

The University’s jurisdiction concerning misconduct by students is governed by the University’s Student Code of Conduct (“Code”). The Code applies to Prohibited Conduct which occurs on University-controlled property. The Code also applies to Prohibited Conduct that occurs off of University-controlled property in certain situations, including Prohibited Conduct which: (1) occurs in connection with a University-affiliated activity including, without limitation, an overseas study program or a clinical, field, internship, or in-service experience; (2) is prohibited by local, state, or federal law, and the conduct was committed within Knox, Anderson, Union, Grainger, Jefferson, Sevier, Blount, Loudon, Roane County, Coffee County (UTSI students), or Franklin County (UTSI students); (3) is fairly attributable to a student organization based on a consideration of the criteria in the Code; (4) is committed against another member of the University

¹ “University” in this Policy means The University of Tennessee, Knoxville; The University of Tennessee Institute of Agriculture; The University of Tennessee Institute for Public Service; and/or The University of Tennessee System Administration.

community; or (5) threatens, or indicates that the student poses a threat to, the health, safety, or welfare of others or the security of any person's property. The University may address Prohibited Conduct that occurs off-campus regardless of whether the University has a duty under Title IX to address the conduct.

1.2.3 Effective Date

The effective date of this Policy is August 20, 2018. This Policy applies to all Prohibited Conduct reported to have occurred on or after August 20, 2018. If the Prohibited Conduct reportedly occurred prior to August 20, 2018, then: (1) the report will be evaluated using definitions of misconduct contained in applicable university policies in effect at the time of the reported Prohibited Conduct; and (2) other aspects of the University's response to the report (e.g., investigation and resolution procedures) will be based on this Policy.

1.2.4 Other University Policies

Except for University of Tennessee System Safety Policy 0575 (Programs for Minors) (policy.tennessee.edu/safety_policy/sa0575/) and as otherwise provided in this Policy, this Policy takes precedence over other University policies and procedures concerning Prohibited Conduct in the event of a conflict.

Consensual romantic or sexual relationships between members of the University community are subject to other University policies. For example, the University's policy on amorous or sexual relationships between faculty and students can be found in Section 2.2.6 of the UTK Faculty Handbook (provost.utk.edu/faculty/manuals/faculty-handbook/). Even if an amorous or sexual relationship between members of the University community begins as consensual and welcome, it can evolve into situations that lead to allegations of Prohibited Conduct. In addition, depending on the circumstances, a consensual sexual relationship may also violate other University policies, including, without limitation: University of Tennessee System Human Resources Policies 0220 ("Equal Employment Opportunity Affirmative Action and Diversity") (policy.tennessee.edu/hr_policy/hro220/), 0280 ("Sexual Harassment and Other Discriminatory Harassment") (policy.tennessee.edu/hr_policy/hro280/), and 0580 ("Code of Conduct") (policy.tennessee.edu/hr_policy/hro580/).

1.3 ACADEMIC FREEDOM AND FIRST AMENDMENT RIGHTS

This Policy is not intended to, and will not be used to, infringe on academic freedom or to censor or punish students, faculty, or staff who exercise their First Amendment rights, even though such expression may be offensive or unpleasant.

SECTION 2 CARE, SUPPORT, AND REPORTING OPTIONS

2.1 OVERVIEW

Complainants have a wide range of options for care, support, and reporting in response to an incident of Prohibited Conduct. For comprehensive information about those options, students and employees should refer to [Appendix A](#). Third parties should contact the University’s Title IX Coordinator.

2.2 TITLE IX COORDINATOR/TITLE IX OFFICIALS

The University is subject to the requirements of Title IX of the Education Amendments of 1972, which states:

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance

The University’s Title IX Coordinator is responsible for coordinating the University’s efforts to comply with and carry out its responsibilities under Title IX, including promptly, thoroughly, and equitably investigating and resolving reports of Prohibited Conduct to eliminate Prohibited Conduct, prevent its recurrence, and remedy its effects.

The University’s Title IX Coordinator is:

Ashley Blamey
1817 Melrose Avenue
Knoxville, TN 37996
(865) 974-9600
ashleyblamey@utk.edu
titleix.utk.edu

Reports or complaints of Prohibited Conduct or any other kind of Sex Discrimination, or questions about the University’s policies, procedures, resources, or programs concerning any of those issues, may be directed to the University’s Title IX Coordinator or other Title IX Officials, who are trained and accessible to members of the University community for consultation and assistance.

The term “Title IX Official” in this Policy means the Title IX Coordinator, a Deputy Title IX Coordinator, or one of their designees.

The responsibilities of Title IX Officials are described in more detail at titleix.utk.edu. The Title IX Coordinator is available to meet with any student, employee, or third party to answer questions about this Policy. Inquiries or complaints concerning Title IX also may be referred to the United States Department of Education, Office for Civil Rights, 61 Forsyth Street, S.W., Suite 19T10, Atlanta, GA 30303-8927, (404) 974-9406 (phone), (404) 974-9471 (fax), OCR.Atlanta@ed.gov.

The University’s Deputy Title IX Coordinators are:

NAME	TITLE(S)	CONTACT INFORMATION
Jenny Richter	Deputy Title IX Coordinator for Human Resources/Office of Equity and Diversity (OED) Associate Vice Chancellor and Director, Office of Equity and Diversity	1840 Melrose Avenue Knoxville, TN 37996 (865) 974-2498 jrichter@utk.edu oed.utk.edu
Sarah Thomas	Deputy Title IX Coordinator for Student Support	1817 Melrose Avenue Knoxville, TN 37996 (865) 974-9600 sarahthomas@utk.edu titleix.utk.edu
Laura Bryant	Deputy Title IX Coordinator for Student Prevention Director, Center for Health Education and Wellness	1800 Volunteer Blvd., Suite 201 Knoxville, TN 37996 (865) 974-5725 lbryant7@utk.edu wellness.utk.edu
Betsy Smith	Deputy Title IX Coordinator for Student Conduct Director, Office of Student Conduct and Community Standards	412 Student Services Building Knoxville, TN 37996 (865) 974-3171 bbsmith@utk.edu studentconduct.utk.edu
Donna Thomas	Deputy Title IX Coordinator for Intercollegiate Athletics Senior Associate Athletics Director/Senior Woman Administrator	Brenda Lawson Athletic Center 1551 Lake Loudon Boulevard Knoxville, TN 37996 (865) 974-0123 dthomas7@utk.edu
Jillian Paciello	Deputy Title IX Coordinator for Law Enforcement and Clery Compliance Clery Compliance Coordinator	University of Tennessee Police Department 1101 Cumberland Avenue Knoxville, Tennessee 37996 (865) 974-0544 jpaciell@utk.edu clery.utk.edu ; utpolice.utk.edu

2.3 DISTINCTION BETWEEN PRIVACY AND CONFIDENTIALITY

Under this Policy, privacy should be distinguished from confidentiality.

- **Confidentiality:** If a Complainant desires to communicate with someone who, by law, can keep information confidential, then the Complainant should contact one of the resources outlined in Section 2.4.
- **Privacy:** Information communicated to a Title IX Official (Section 2.2) or a Mandatory Reporter (Section 2.5.2.1) will not be confidential but will be kept private, which means that the information will initially be shared only with the University employees whom a Title IX Official determines need to be involved in responding to the incident, except as required or permitted by law.² A Title IX Official will not share information with the Respondent if the University grants a Complainant’s Request for Limited Action (Section 2.5.2.4). When speaking with a Title IX Official, Complainants are free to limit the details they share while they decide whether to report an incident to the University.

² An employee of the University of Tennessee Police Department (UTPD) participates in the University’s Title IX Response Team. However, UTPD will not write a police report unless the Complainant decides to report the incident to the police. A description of the University’s Title IX Response Team can be found at titleix.utk.edu.

2.4 CONFIDENTIAL CARE AND SUPPORT

The persons identified below can keep information communicated to them confidential and will not communicate such information to a Title IX Official, the University, the police, or any other third party, unless required or permitted by law. Complainants may pursue these confidential care, support, and reporting options regardless of whether they choose to report the incident to the University or the police (Section 2.5).

2.4.1 Confidential Employees

A student or employee may speak with a Confidential Employee if they do not desire action by the University but desire to confide in a University employee confidentially. Confidential Employees are University employees who can keep information confidential because they hold a valid license in a profession for which Tennessee law recognizes a confidential relationship between a professional and a professional's client or patient. **Appendix A** identifies the University's Confidential Employees and explains the limited situations in which Confidential Employees are required or permitted by law to disclose confidential information.

2.4.2 Confidential Care and Support Outside of the University Community

Students and employees also have options to receive confidential care and support from someone who is not affiliated with the University or the police. Those options also are described in **Appendix A**.

2.5 REPORTING OPTIONS

A Complainant has multiple options for reporting Prohibited Conduct. A Complainant may report Prohibited Conduct to the University, to the police, to both, or to neither.

2.5.1 Report to the Police

Prohibited Conduct may constitute both a violation of this Policy and criminal law. Therefore, the University encourages Complainants to report incidents of Prohibited Conduct to the police. Prompt reporting of an incident to the police is especially critical for incidents of Nonconsensual Sexual Penetration because the collection and preservation of evidence relating to Nonconsensual Sexual Penetration often is essential for police investigations and criminal prosecutions. A Complainant has the right to decline to report the incident to the police. Even if a Complainant does not report the incident to the police, the Complainant may still request Interim Measures (Section 2.6) by reporting the incident to a Title IX Official. **Appendix A** provides contact information for campus and local police and information about what to expect after reporting an incident to the police. **Appendix A, Sections 1.1 and 2.1**, also provide suggestions about the preservation of evidence relating to Prohibited Conduct.

2.5.2 Report to the University

A person who wants to report Prohibited Conduct to the University should contact a Title IX Official (Section 2.2). If a person reports Prohibited Conduct to a University employee who is not a Title IX Official, then the employee's responsibility to report that information to the University depends on whether the employee is a Mandatory Reporter.

2.5.2.1 Mandatory Reporters

A Mandatory Reporter is a University employee who is required to report information about known or suspected Prohibited Conduct to a Title IX Official, whether the employee received the information by means of a complaint, report, personal observation, or otherwise, including information learned from third parties. **A University employee is almost always a Mandatory Reporter when either the Complainant or Respondent is a student.** Employees who have questions about their reporting responsibilities, or students who have questions about an employee's reporting responsibilities, should contact the Title IX Coordinator.

A University employee is a Mandatory Reporter if either of the following apply:

- (1) The Prohibited Conduct **involves either a Complainant who is a student or a Respondent who is a student.**

OR

- (2) The employee is the **supervisor of either a Complainant who is an employee or a Respondent who is an employee**, or otherwise has the authority to redress the Prohibited Conduct (e.g., human resources administrators, OED employees, Title IX Officials, department heads, deans, vice chancellors, chancellors, vice presidents, campus police).

Exceptions – No Duty to Report:

- The employee is a Confidential Employee (Section 2.4.1) and receives the information while acting in a professional, confidential capacity;
- The employee receives the information during a public awareness event such as “Take Back the Night,” candlelight vigils, protests, “survivor speak outs” or other public forums;
- The employee receives the information through a person’s participation as a subject in an Institutional Review Board-approved human subjects research protocol;
- The employee receives information through an in-class discussion, a class paper, or other academic assignment; or
- The employee is a student employee (e.g., graduate assistant) and did not receive notice of the incident in the student employee’s University employment capacity.

Mandatory Reporters are required to inform a Title IX Official about all information known to them about the Prohibited Conduct. Failure to adhere to one’s duty to report Prohibited Conduct to a Title IX Official may result in disciplinary action, up to and including termination of employment. **Appendix E** explains other actions that a Mandatory Reporter must take, should take, and must not take in response to notice of Prohibited Conduct. Complainants who are Mandatory Reporters are not required to report or take any other action identified in this section with respect to Prohibited Conduct to which they personally have been subjected.

University employees also may have reporting responsibilities under other University policies, such as:

- **Child Abuse:** Employees who receive information about suspected child abuse or child sexual abuse must comply with University of Tennessee System Safety Policy 0575 (Programs for Minors) (policy.tennessee.edu/safety_policy/sa0575/). Safety Policy 0575 takes precedence over this Policy with respect to reporting suspected child abuse and child sexual abuse. Note that under Tennessee law, the obligation to report child abuse or child sexual abuse is not limited to situations involving University-related activities and programs.
- **Campus Security Authorities - Clery Act:** Mandatory Reporters who have been designated by UTPD as Campus Security Authorities for purposes of compliance with the Jeanne Clery Disclosure of Campus Security and Campus Crime Statistics Act (“Clery Act”) satisfy their reporting duties with respect to this Policy and the Clery Act if they report the incident to a Title IX Official. The Title IX Official is responsible for timely communicating the appropriate non-personally identifying information to UTPD. **Employees who have been designated as Campus Security Authorities may have an obligation to report misconduct to UTPD even when they do not have an obligation to report the misconduct under this Policy. Questions about the reporting obligations of Campus Security Authorities should be directed to Jillian Paciello, the University’s Clery Compliance Coordinator, at jpaciell@utk.edu or (865) 974-0544.**

2.5.2.2 Benefits of Reporting Prohibited Conduct to the University

Reporting Prohibited Conduct to the University empowers Complainants to obtain the support they need and enables the University to respond appropriately, including conducting a prompt, thorough, and equitable investigation and, if warranted, pursuing disciplinary action against a Respondent. Complainants are not required to report Prohibited

Conduct if they do not want the University to respond to the incident or assist with Interim Measures (Section 2.6). A Complainant may opt to report an incident of Prohibited Conduct but decline to disclose the identity of the Respondent; in that case, a Title IX Official will offer Interim Measures to the Complainant, but the University's ability to investigate the incident and pursue disciplinary action against the Respondent or take other remedial action will be limited. If an incident is not reported to the University, then the University will not be able to take steps to: identify care and support resources for the Complainant, such as Interim Measures; or promptly, thoroughly, and equitably investigate the incident and/or resolve the situation to eliminate the Prohibited Conduct, prevent its recurrence, and address its effects on the Complainant or the University community.

2.5.2.3 *Initial Response and Assessment by the Title IX Coordinator*

Appendix A, Section 2.3.2 describes the steps the Title IX Coordinator will take after receiving a report of Prohibited Conduct

2.5.2.4 *Request for Limited Action*

A Complainant has the right to do the following when an incident of Prohibited Conduct is reported to a Title IX Official:

- Request that the report of Prohibited Conduct or the Complainant's contact with a Title IX Official not be disclosed to the Respondent;
- Decline to personally identify the Respondent;
- Decline to respond to communications from a Title IX Official; and/or
- Request that the University not investigate the incident or stop an ongoing investigation that is not substantially complete.

Such an action is referred to in this Policy as a "**Request for Limited Action.**"

The Title IX Coordinator evaluates Requests for Limited Action, although the Title IX Coordinator may delegate the authority to evaluate Requests for Limited Action to the Deputy Title IX Coordinator for Human Resources/OED in cases involving employees.

If the Complainant makes a Request for Limited Action, then the Title IX Coordinator will seriously weigh the request against the University's obligation to provide a safe, non-discriminatory environment for all members of the University community, including the Complainant. If the Title IX Coordinator honors the Request for Limited Action, then the University's ability to respond fully to the incident (e.g., meaningfully investigate the incident and pursue disciplinary action against the Respondent or take other remedial action) may be limited.

There are limited circumstances in which the Title IX Coordinator may not grant a Request for Limited Action because of the University's commitment to providing a safe and non-discriminatory learning, living, and working environment free from Prohibited Conduct. For example, if the University has credible information that the Respondent has committed one or more other acts of Prohibited Conduct, then the balance of factors might compel the University to investigate the allegation, and, if appropriate, pursue disciplinary action in a manner that may make known the Complainant's identity to the Respondent.

When evaluating a Request for Limited Action, the Title IX Coordinator will consider a range of factors, including, without limitation, the following factors:

- The risk that the Respondent will commit additional acts of Prohibited Conduct, such as:
 - Whether there have been other reports of Prohibited Conduct or other relevant misconduct concerning the same Respondent, whether or not the incidents occurred while the Respondent was a University student or employee;
 - Whether the Respondent threatened further Prohibited Conduct or other misconduct against the Complainant or others; and

- Whether the Prohibited Conduct was committed by multiple perpetrators;
- The nature and scope of the Prohibited Conduct, including whether the Prohibited Conduct was perpetrated with a weapon;
- The ages and roles of the Complainant and the Respondent;
- Whether the University can pursue the investigation without the participation of the Complainant (e.g., whether there are other available means to obtain relevant evidence of the Prohibited Conduct such as security cameras or physical evidence);
- Whether the Complainant’s report reveals a pattern of perpetration (e.g., perpetration involving illicit use of drugs or alcohol) at a given location or by a particular group; and
- The University’s commitment to providing a safe, non-discriminatory environment, including the risk posted to any individual or to the campus community by not proceeding with an investigation.

The presence of one or more of those factors could lead the Title IX Coordinator to deny the Request for Limited Action. If the Title IX Coordinator grants a Request for Limited Action, then the University will take reasonable steps to respond to the report consistent with the Request for Limited Action and will take prompt actions that the University determines are necessary to protect and assist the Complainant while not disclosing the Complainant’s identity to the Respondent (e.g., providing the Complainant with Interim Measures).

If the Title IX Coordinator determines not to grant the Request for Limited Action, then the Title IX Coordinator will inform the Complainant of the decision prior to starting/continuing the investigatory/disciplinary process and will, to the extent possible and unless otherwise required by law, only share information with people responsible for handling the University’s response. If the Title IX Coordinator determines that the University must disclose the Complainant’s identity to the Respondent, then the Title IX Coordinator will inform the Complainant of that determination prior to the disclosure. The University will honor a request by the Complainant that the University inform the Respondent that the Complainant asked the University not to investigate or seek discipline. The University will take ongoing steps that it determines are reasonable and appropriate to protect the Complainant from Retaliation or harm and may work with the Complainant to create a safety plan. The University will also assist the Complainant to access the support resources identified in [Appendix A](#), including Interim Measures, and inform the Complainant of the right to report a crime to campus or local law enforcement (and provide the Complainant with assistance in reporting if the Complainant requests it). The University will not tolerate Retaliation against any person, including the Complainant.

Because the University is under a continuing obligation to address the issues of Prohibited Conduct campus-wide, reports of Prohibited Conduct (including non-identifying reports) may also prompt the University to consider broader remedial action – such as increased monitoring, supervision or security at locations where the reported Prohibited Conduct occurred; increasing education and prevention efforts, including to targeted population groups; conducting additional climate assessments/victimization surveys; and/or revisiting its policies and practices.

2.5.2.5 Complainant’s Participation in an Investigation or Disciplinary Proceeding

The University will not require a Complainant to participate in any investigation, or hearing before a Student Life Hearing Officer or Student Disciplinary Board. A Complainant may be required to participate in a disciplinary hearing held pursuant to the Uniform Administrative Procedures Act if the Complainant receives a subpoena from a party other than the University. If a Complainant chooses not to participate in an investigation or disciplinary hearing, the University’s ability to discipline the Respondent may be affected.

2.5.2.6 Amnesty

The University recognizes that a student who is under the influence of alcohol and/or drugs at the time of an incident of Prohibited Conduct may be hesitant to report the incident to the University because of a fear of University disciplinary sanctions for the person’s own violation of the University standards of conduct. Because of the importance to the University of responding to incidents of Prohibited Conduct, a student who reports Prohibited Conduct to the University or provides information in a University investigation into alleged Prohibited Conduct will not be subject to disciplinary action by the Office of Student Conduct and Community Standards for personal consumption of alcohol or other drugs, or minor offenses, at or near the time of the reported incident, but may be responsible for other, more serious conduct that harmed or placed the health or safety of any other person at risk (“Amnesty”). The University may, however, initiate an

educational discussion or pursue other educational remedies with the student or employee regarding alcohol or drugs. The Title IX Coordinator has the discretion to grant Amnesty to other persons other than the person who reported Prohibited Conduct (e.g., Complainant, Respondent, witnesses). The Student Code of Conduct, Section 11, also contains a policy on amnesty for individuals acting as good Samaritans and students in need of emergency medical attention. This Section 2.5.2.5 does not apply to reports to the police; rather, it applies only to discipline for violations of the University's Code of Conduct.

2.5.2.7 False Reports

A person who makes a report of Prohibited Conduct to the University that is later found to have been intentionally false or made maliciously without regard for truth may be subject to University disciplinary action. This provision does not apply to reports made in good faith, even if an investigation of the incident does not find a Policy violation. Similarly, a person who intentionally provides false information to the University during a University investigation or disciplinary proceeding action may be subject to disciplinary action.

2.6 INTERIM PROTECTIVE AND REMEDIAL MEASURES

After receiving a report of Prohibited Conduct, the Title IX Coordinator may implement interim protective and remedial measures ("Interim Measures") while the University assesses, investigates, and resolves the report. Interim Measures are designed to eliminate and prevent the recurrence of Prohibited Conduct, deter Retaliation, and remedy the effects of Prohibited Conduct through reasonable support services, accommodations, and other assistance. Interim Measures may be implemented upon request or at the Title IX Coordinator's initiative.

The specific Interim Measures implemented and the process for implementing those measures will usually be determined by the Title IX Coordinator and will vary and be individualized, reasonable, and appropriate depending on the facts of each case and the student or employee status of the Complainant and the Respondent.³ In fairly assessing the need for an individual to receive Interim Measures, the Title IX Coordinator does not rely on fixed rules or operating assumptions in favor of one party over another.

Examples of Interim Measures are listed in [Appendix A](#), Section 1.5. Interim Measures are available to Complainants and Respondents.

Interim Measures are available:

- Even if the Complainant does not want to report the incident to the police;
- Even if the Complainant has made a Request for Limited Action and the University has granted the Request for Limited Action. (The University may be limited in the Interim Measures it can implement while keeping the identity of the Complainant private, such as: providing support services to the Complainant; changing living arrangements or course schedules, assignments, or tests; and providing increased monitoring, supervision, or security at locations or activities where the Prohibited Conduct occurred);
- To the Complainant, the Respondent, and witnesses, when determined to be appropriate by the Title IX Coordinator; and
- Prior to, during, or after the investigation or resolution of a report of Prohibited Conduct.

In implementing Interim Measures, the University attempts to minimize the burden on the Complainant while balancing the due process rights, if any, of the Respondent. If an individual requests Interim Measures through a Confidential Employee, then the University may be limited in its ability to provide the Interim Measures depending on how much information the individual is willing to share with the Title IX Coordinator. Information about Interim Measures generally will be shared only within the limited circle of those University employees whom the University reasonably needs to involve in providing the Interim Measures. However, information about an Interim Measure for one party (e.g., the Complainant) that directly affects the other party (e.g., the Respondent) will be shared with the affected party (e.g., a no-contact directive).

³ The Clery Act requires the University to provide certain interim measures upon the request of a Complainant if such measures are reasonably available. 34 C.F.R. § 668.46(b)(11)(v).

Individuals are encouraged to report to the Title IX Coordinator concerns about the failure of another person to abide by the terms of an Interim Measure; however, in the event of an immediate health or safety concern individuals should call 911. The University will take immediate and responsive action to enforce a previously implemented Interim Measure and alleged violations will be investigated and addressed by the appropriate office. The Title IX Coordinator will strive to communicate with the Complainant and the Respondent throughout an investigation to ensure that the Interim Measures in place are necessary and effective based on the evolving needs of the parties. The Title IX Coordinator has the discretion to issue, modify, or remove any Interim Measure at any time.

With respect to non-student employees and third parties, the Title IX Coordinator has delegated the authority to determine and implement appropriate Interim Measures to the Deputy Title IX Coordinator for Human Resources/OED.

SECTION 3
PROCEDURES USED TO ADDRESS PROHIBITED CONDUCT

The University has specific procedures for addressing reports of Prohibited Conduct after the initial response and assessment by the Title IX Coordinator (Section 2.5.2.3). The procedures the University uses are based on the relationship of the Respondent to the University.

3.1 PROCEDURES WHEN THE RESPONDENT IS A STUDENT

Appendix C describes the procedures the University uses to investigate and resolve allegations of Prohibited Conduct when the Respondent is a student.

3.2 PROCEDURES WHEN THE RESPONDENT IS AN EMPLOYEE

Appendix D describes the procedures the University uses to investigate and resolve allegations of Prohibited Conduct when the Respondent is an employee.

3.3 PROCEDURES WHEN THE RESPONDENT IS BOTH A STUDENT AND AN EMPLOYEE

When the Respondent is both a student and an employee: (1) the Title IX Coordinator will determine the appropriate procedures to use to address the report of Prohibited Conduct based on the facts and circumstances of the situation; and (2) the Respondent may receive sanctions under the University's Student Code of Conduct and/or University disciplinary policies for employees.

3.4 PROCEDURES WHEN THE RESPONDENT IS A THIRD PARTY

Appendix D describes the procedures the University uses to investigate and resolve allegations of Prohibited Conduct when the Respondent is a third party, such as a visitor or vendor. The University's ability to take appropriate disciplinary, remedial, and/or protective measures with respect to a third party will depend on the nature of the relationship between the third party and the University. The Title IX Coordinator (or designee) has the authority to alter the manner of resolving a report of Prohibited Conduct committed by a third party if the procedures in **Appendix D** are not appropriate.

SECTION 4 PROHIBITED CONDUCT

4.1 INTRODUCTION

This Policy prohibits the following conduct:⁴

- **Sexual Misconduct**
 - **Sexual Assault**
 - **Nonconsensual Sexual Penetration**
 - **Nonconsensual Sexual Contact**
 - **Sexual Harassment**
 - **Sexual Exploitation**
- **Relationship Violence**
- **Stalking**
- **Retaliation**

Section 4.2 contains definitions of Prohibited Conduct, and Section 4.3 contains definitions of other terms used in the definitions of Prohibited Conduct.

4.2 DEFINITIONS OF PROHIBITED CONDUCT

4.2.1 Sexual Misconduct

“**Sexual Misconduct**” is an umbrella term that encompasses Sexual Assault, Sexual Harassment, and Sexual Exploitation.

4.2.2 Sexual Assault

“**Sexual Assault**” is an umbrella term that encompasses Nonconsensual Sexual Penetration; Nonconsensual Sexual Contact; and conduct that meets the definition of rape, fondling, incest, or statutory rape as used in the FBI’s Uniform Crime Reporting program.

4.2.3 Nonconsensual Sexual Penetration

“**Nonconsensual Sexual Penetration**” means Sexual Penetration, however slight, performed upon another person that occurs without that person’s Consent. “Sexual Penetration” means penetration of a vagina or anus by a penis, object, tongue, finger, or other body part; or contact between the mouth of one person and the genitals or anus of another person.

4.2.4 Nonconsensual Sexual Contact

“**Nonconsensual Sexual Contact**” means Sexual Contact, however slight, performed upon another person that occurs without that person’s Consent. “Sexual Contact” means intentional physical contact with another person’s breasts, buttocks, groin, or genitals, whether clothed or unclothed; intentional contact with another person using one’s breasts,

⁴ The University’s Nondiscrimination Statement (oed.utk.edu/statement/) prohibits Sex Discrimination in any University education program or activity, including employment and admissions. Sex Discrimination means conduct directed at a specific person or a group of identifiable persons that subjects the person or group to treatment that adversely affects their employment, education, or ability to participate in or benefit equally in any University program or activity, on the basis of sex. Sex Discrimination may include acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex or sex-stereotyping, even if those acts do not involve conduct of a sexual nature. Sexual Harassment, Sexual Assault, and Sexual Exploitation are all types of Sex Discrimination. A complaint of Prohibited Conduct will be treated as a complaint of Sex Discrimination in violation of the University’s Nondiscrimination Statement if it was based on the sex of the Complainant. Complaints of Sex Discrimination will be handled in accordance with the procedures outlined in Section 3 of this Policy.

buttocks, groin, or genitals, whether clothed or unclothed; causing another person to physically contact oneself with or on the other person's breasts, buttocks, groin, or genitals, whether clothed or unclothed; or any other type of intentional physical contact done in a sexual manner or for the purpose of sexual arousal or gratification, based on the perspective of a Reasonable Person.

4.2.5 Sexual Harassment

With respect to conduct by an employee or other non-student, “**Sexual Harassment**” means words and/or conduct of a sexual nature prohibited by University of Tennessee System Human Resources Policy 0280 (“Sexual Harassment and Other Discriminatory Harassment”) (policy.tennessee.edu/hrpolicy/hro280/).

With respect to conduct by a student, “**Sexual Harassment**” means (1) unwelcome words and/or conduct, (2) that are sexual in nature, sex-based, and/or gender-based, (3) that are pervasive, persistent, or sufficiently severe, (4) that are objectively offensive, and (5) that unreasonably deny, unreasonably limit, or unreasonably interfere with a person's ability to participate in or benefit from a University educational program or activity. In no event shall the term “Sexual Harassment” be construed to prohibit speech protected by the First Amendment to the United States Constitution (e.g., mere insulting or offensive speech). Sexual Harassment may include, for example, unwelcome sexual advances, requests for sexual favors, Sexual Assault, and Sexual Exploitation. To determine whether words and/or conduct constitute Sexual Harassment, the University will consider the totality of the circumstances, including without limitation: the context in which the conduct and/or words occurred; and the frequency, nature, and severity of the words and/or conduct. Depending on the severity of the words and/or conduct, a single incident (e.g., Sexual Assault) may be considered Sexual Harassment.

4.2.6 Sexual Exploitation

“**Sexual Exploitation**” means taking sexual advantage of another person, without that person's active agreement. An active agreement is words and/or conduct that communicate a person's willingness to participate in an act. A person cannot actively agree to an act if: (1) the person is Incapacitated, if either the person claiming to have obtained the other person's active agreement knows that the other person is Incapacitated or a Reasonable Person would know that the other person is Incapacitated; or (2) the person is Forced to act or participate in an activity.

Examples of Sexual Exploitation include, without limitation:

- Surreptitiously observing, photographing, audiotaping, videotaping, or recording an image of a person who is engaging in Sexual Contact or Sexual Penetration, or a person's breasts, buttocks, groin, or genitals, when the person being observed/photographed/audiotaped/videotaped/recorded is in a place in which the person has a reasonable expectation of privacy;
- Allowing or enabling a person to surreptitiously observe, photograph, audiotape, videotape, or record an image of another person who is engaging in Sexual Contact or Sexual Penetration, or another person's breasts, buttocks, groin, or genitals, when the person being observed/photographed/audiotaped/videotaped/recorded is in a place in which the person has a reasonable expectation of privacy;
- Showing, posting, or sharing video, audio, or an image that depicts a person who is engaging in Sexual Contact or Sexual Penetration, or a person's breasts, buttocks, groin, or genitals, when the person being observed/photographed/audiotaped/videotaped/recorded is in a place in which the person has a reasonable expectation of privacy, if all persons who are depicted have not agreed to having the video/audio/image shown, posted, or shared;
- Prostituting another person or engaging in sex trafficking;
- Knowingly exposing another person to a sexually transmitted infection or disease without informing the other person that one has a sexually transmitted infection or disease;
- Forcing a person to participate in Sexual Contact or Sexual Penetration with a person other than oneself;
- Forcing a person to expose the person's breasts, buttocks, groin, or genitals;
- Forcing a person to take an action against that person's will by threatening to show, post, or share video, audio, or an image that depicts the person's nudity or depicts the person engaging in Sexual Contact or Sexual Penetration;
- Forcing a person to take an action of a sexual nature against that person's will by threatening to disclose information that would harm a person's reputation;
- Forcing a person to take an action against that person's will by threatening to disclose information of a sexual or intimate nature that would harm a person's reputation; or

- Causing or requesting an Incapacitated person to expose the person’s breasts, buttocks, groin, or genitals or to participate in Sexual Contact or Sexual Penetration with a person other than oneself.

4.2.7 Relationship Violence

“Relationship Violence” means an act of violence, or a threat of an act of violence, committed by a person who is or has been in a sexual, dating, spousal, romantic, familial, or other intimate relationship with the Complainant.⁵

- “Act of violence, or a threat of an act of violence” means: causing physical harm to any person; endangering the health, safety, or welfare of any person; engaging in conduct that would cause a Reasonable Person to fear harm to their health or safety; or making an oral or written statement that a Reasonable Person hearing or reading the statement would interpret as a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals.
- The existence of a sexual, dating, spousal, romantic, familial, or other intimate relationship shall be determined based on the totality of the circumstances including, without limitation: (1) the length of the relationship; (2) the type of relationship; and (3) the frequency of interaction between the persons involved in the relationship.

Relationship Violence also may be a form of Sex Discrimination prohibited by federal and state antidiscrimination laws, such as Title VII and Title IX, and/or may constitute a crime in Tennessee.

Relationship Violence does not include roommates who do not have an intimate relationship.

In cases involving allegations of mutual acts or threats of acts of violence, the designated investigator(s) will, when appropriate, identify the primary aggressor in the situation based on the totality of the information gathered, including without limitation: the history of violence between the parties; the relative severity of the injuries inflicted on each person; information gathered from the persons involved in the situation and witnesses to the situation; and whether the acts or threats were done in self-defense. The primary aggressor will be considered the Respondent for purposes of evaluating Relationship Violence.

4.2.8 Stalking

“Stalking” means engaging in a course of conduct directed at a specific person, regardless of one’s relationship with that person, which would cause a Reasonable Person to: (1) fear for the person’s safety or the safety of another person; and/or (2) suffer substantial emotional distress. “Course of conduct” means two or more acts, including, but not limited to, acts in which a person directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates with or about another person, or interferes with another person’s property. “Substantial emotional distress” means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling. Stalking includes the concept of cyber-stalking, a particular form of stalking in which electronic media such as the internet, social networks, blogs, cell phones, texts, or other similar devices or forms of contact are used. Stalking also may be a form of Sex Discrimination prohibited by federal and state antidiscrimination laws, such as Title VII and Title IX, and/or may constitute a crime in Tennessee.

4.2.9 Retaliation

“Retaliation” means an action taken because of a person’s participation in a protected activity and that would discourage a Reasonable Person from engaging in protected activity. “Protected activity” means a person’s good faith: (1) opposition to Prohibited Conduct or assisting a person who opposes Prohibited Conduct; (2) report of Prohibited Conduct to the University, the police, or to a state or federal agency or assisting a person who reports Prohibited Conduct; (3) participation (or reasonable expectation of participation) in any manner (e.g., in an investigation, proceeding, or hearing relating to Prohibited Conduct) or requesting an Interim Measure under this Policy; and/or (4) exercise of rights or responsibilities under any provision of the Clery Act. An action is not taken in good faith if done with knowing or reckless disregard for information that would negate the accuracy of the report or information. Retaliation is a violation of this Policy regardless of whether the underlying allegation of a violation of this Policy is ultimately found to have merit.

⁵ The University also prohibits “domestic violence” and “dating violence” as defined by the Clery Act.

4.3 RELATED DEFINITIONS: CONSENT; FORCE; INCAPACITATION; REASONABLE PERSON

4.3.1 Consent

“**Consent**” means an active agreement to participate in Sexual Contact or Sexual Penetration. An active agreement is words and/or conduct that communicate a person’s willingness to participate in Sexual Contact or Sexual Penetration.

The following individuals cannot give valid Consent:

- A person who is Incapacitated, if either the person claiming to have obtained Consent knows that the other person is Incapacitated or a Reasonable Person would know that the other person is Incapacitated;
- A person who is Forced; or
- A person who is under the age of eighteen (18), unless the person giving Consent is at least the age of thirteen (13) and the other person is less than four (4) years older than the person giving Consent.

Appendix B explains how the University determines whether Consent was obtained. **Persons subject to this Policy are responsible for understanding and conforming their conduct to the standards described in this Section 4 and Appendix B.**

4.3.2 Force

“**Force (Forced)**” means words and/or conduct that, viewed from the perspective of a Reasonable Person, substantially impair(s) a person’s ability to voluntarily choose whether to take an action or participate in an activity.

Examples of Force include, without limitation:

- Physical force (e.g., hitting, punching, slapping, kicking, restraining, choking, kidnapping, using a weapon, blocking access to an exit);
- Words and/or conduct that would cause a Reasonable Person to fear:
 - Physical force or other harm to the person’s health, safety, or property, or a third person’s health, safety, or property;
 - Loss or impairment of an academic benefit, employment benefit, or money;
 - Disclosure of sensitive personal information or information that would harm a person’s reputation;
 - Disclosure of video, audio, or an image that depicts the person’s nudity or depicts the person engaging in Sexual Contact or Sexual Penetration; or
 - Other immediate or future physical, emotional, reputational, financial, or other harm to the person or a third person.

4.3.3 Incapacitation

“**Incapacitation (Incapacitated)**” means a person’s inability, temporarily or permanently, to communicate a willingness to participate in an activity (e.g., Sexual Contact or Sexual Penetration) because of mental or physical helplessness, sleep, unconsciousness, or other lack of awareness that the activity is taking place.

Incapacitation can be voluntary or involuntary. Signs of Incapacitation may include, without limitation: sleep; total or intermittent unconsciousness; lack of control over physical movements (e.g., inability to dress/undress without assistance; inability to walk without assistance); lack of awareness of circumstances or surroundings; emotional volatility; combativeness; vomiting; incontinence; unresponsiveness; and inability to communicate coherently. Incapacitation is an individualized determination based on the totality of the circumstances. Alcohol and drugs are common causes of Incapacitation. When alcohol or drugs are involved, Incapacitation is a state beyond mere drunkenness or intoxication.

4.3.4 Reasonable Person

“**Reasonable Person**” means a sober, objectively reasonable person in the same situation, with ordinary sensitivities, and with similar identities as the person whose words and/or conduct are being evaluated by the University.

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