

APPENDIX D

PROCEDURES FOR INVESTIGATING AND RESOLVING ALLEGATIONS OF PROHIBITED CONDUCT WHEN THE RESPONDENT IS AN EMPLOYEE OR THIRD PARTY

The University 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

Scope of OED Authority

The procedures in Exhibit D apply when the person reported to have engaged in Prohibited Conduct is a University employee or someone unaffiliated with the University, such as a visitor to campus or University contractor (although the University’s ability to investigate and implement any necessary corrective action with respect to unaffiliated individuals may be limited). The person making a complaint is referred to as the Complainant. The person reported to have engaged in Prohibited Conduct is referred to as the Respondent. When the Respondent is a University student, see titleix.utk.edu to report violations of this Policy.

Complaints of Prohibited Conduct against employees and individuals not affiliated with the University may be directed to the Title IX Coordinator or to the Office of Equity and Diversity, (865) 974-2498, oed.utk.edu. Formal complaints by employees should be in writing and made within 300 calendar days of the alleged violation. In certain circumstances, at the discretion of OED, complaints filed outside the 300 day time limit or not submitted in writing may be investigated.

Privacy and Requests for Limited Action

Information communicated to OED will be kept as private as possible and will be shared only as necessary to conduct a thorough and effective investigation and to comply with federal and state laws. In addition, the University may need to release certain documents in response to a public records act request.

A Complainant may request that the Complainant’s contact with OED not be disclosed to the Respondent, that no investigation be conducted, or that no disciplinary action be taken. When a Complainant makes a request that the University take such limited action, the University will seriously weigh that request against the University’s obligation to provide a safe environment for all members of the University community, including the Complainant. Cases of Prohibited Conduct will be evaluated consistent with Section 2.5.2.4 of the Policy.

Informal Complaints and Resolution

Complainants who are employees and who feel comfortable doing so are encouraged, but not required, to attempt to resolve issues through the administrative structure of the employment unit or academic department of the Complainant and/or Respondent (if an employee). OED is available to provide assistance to the Complainant and employment unit or academic department.

If a Complainant who is an employee does not wish to seek resolution directly with their employment unit or academic department, he or she may decide to seek either an informal or formal resolution with OED. A Complainant who chooses an informal resolution process may decide to proceed with a formal complaint at any time during the informal process or after completion of the informal process if a mutually acceptable resolution is not reached.

Complainants who are not employees may seek either an informal or formal resolution with OED.

The goal of the informal process is to attempt to reach a resolution that is acceptable to both the Complainant and the Respondent. The University does not make a determination as to whether a Respondent has engaged in Prohibited Conduct. Instead, OED attempts to facilitate a mutually acceptable

¹ Capitalized terms have the same meaning in the Policy and Exhibit D.
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resolution. In the informal process, OED will speak to those people whose involvement is necessary to facilitate a resolution. Frequently, this includes only the Complainant and Respondent, followed by notification to the appropriate supervisors or administrators, if the Complaint or Respondent is an employee, to help implement a resolution. Possible informal resolutions might include, but are not limited to: (1) an agreement by Respondent to cease the behavior; (2) assisting the Respondent to better understand the effects of his or her conduct and ways in which the behavior might be changed; or (3) participation in education programs about equal opportunity or diversity.

Formal Complaints -- Where, When, and How to File

The goal of the formal complaint process is to reach a determination as to whether a Respondent engaged in Prohibited Conduct. All investigations and proceedings, including any disciplinary proceedings, will be conducted using a “preponderance of the evidence” standard. As a part of the formal complaint process, OED will conduct an investigation into the allegations and prepare a written report. OED will consider requests for privacy and other limited action as discussed above but may not be able to honor such requests during the formal complaint process.

1. A formal complaint must include the name of the Complainant, a description of the complained of action or conduct, and the person or entity that is responsible for the action. The Complainant should identify witnesses and other evidence the Complainant wants OED to consider in its investigation. OED may request that the Complainant identify resolutions that might be acceptable. The Respondent and, if applicable, the appropriate administrator with supervisory responsibility will be notified of the complaint.
2. OED will conduct an investigation into whether Respondent engaged in Prohibited Conduct. OED will determine the nature and scope of the investigation on a case-by-case basis. The investigation may include any or all of the following, as well as such other action as OED deems appropriate: interviewing the Complainant, interviewing the Respondent, interviewing witnesses, submitting questions to or taking statements from parties or witnesses, and reviewing documents and recordings. In rare cases, OED may set up an investigative committee to conduct an investigation in accordance with this Procedure.
3. Following its investigation, OED will prepare a written report that includes findings and recommendations as to whether Respondent should be found to have engaged in Prohibited Conduct. The report will include the rationale for the findings and recommendations and may include other information. OED will provide the report to the appropriate administrators, if applicable, and will simultaneously provide a copy to the Complainant and Respondent.
4. If the Respondent is an employee, the appropriate administrator is responsible for reviewing the OED report and making a written Determination whether Respondent engaged in Prohibited Conduct. The Determination will include the rationale for the findings and recommendations and, if the Respondent is found responsible, will include a description of remedial and/or corrective measures that the University will implement. The appropriate administrator will simultaneously provide a copy of the Determination to the Complainant, Respondent, and OED. If the Respondent is not an employee, the Title IX Coordinator (or designee) will review the OED report and making a written Determination.
5. Appeals
 - (a) Employees: A Complainant or Respondent who is an employee and who is not satisfied with the Determination (including the discipline imposed, if any) may appeal in accordance with applicable University policies and procedures, including Human Resources Policy HR0525, Human Resources Policy HR0640, and the Faculty Handbook Chapter 5. If the applicable policy or practice does not provide Complainant and Respondent with the same ability to appeal, the University will offer an appeal to both parties consistent with the appeal opportunities offered in policy.

- (b) **Students:** Within fifteen (15) business days after receipt of the Determination, a Complainant who is a student and who is not satisfied with the Determination (including the discipline imposed, if any) may appeal in writing to the next higher administrative level above the person who issued the Determination. The Determination will identify the person to whom an appeal may be made. The Complainant and Respondent will have the same opportunity to provide information to the reviewer during an appeal and will also receive notice of the outcome of any appeal. Decisions on appeals shall be provided in writing and simultaneously to the Complainant and Respondent.
- (c) **Third Parties:** Within fifteen (15) business days after receipt of the Determination, a Complainant or Respondent who is an unaffiliated third party (not an employee or student) may file a request for reconsideration with the Title IX Coordinator. The Title IX Coordinator's decision on reconsideration is not appealable.

OED will ensure that the Title IX Coordinator is appropriately informed regarding reports of Prohibited Conduct.

Advisors

Both the Complainant and Respondent are permitted to bring an advisor (who is not a party or witness) of their choice to any University meetings and hearings, but the advisor's role is limited to providing advice, guidance, and/or support for the Complainant or Respondent. An advisor is not permitted to act as a participant or advocate (except in a TUAPA hearing, in which a Complainant and Respondent may retain an attorney to advocate on their behalf).

Timing of Investigation Stages

OED will conduct the investigation as promptly as possible under the circumstances, taking into account the complexity of the allegations, the complexity of the investigation and resolution, the severity and extent of the alleged misconduct, the number and availability of witnesses, the University's calendar, and/or other unforeseen circumstances. In each case, however, the University will balance the need to complete a prompt investigation and resolution with the need to conduct a thorough and fair investigation.

The University will attempt to follow the following timeframes:

- Completion of OED's investigation, findings, and recommendations; transmission of OED report to appropriate administrator: within sixty (60) business days of receipt of complaint
- Review by appropriate administrator and issuance of Determination: within fifteen (15) business days of receipt of report from OED

If the University is unable to complete these steps within the timeframes stated, the timeframes may be extended, and both the Complainant and Respondent will receive notice of the extension and the reasons for delay.

Disciplinary Action

The University's actions to correct and prevent the recurrence of any Policy violations may include, but not be limited to, taking disciplinary action, up to and including termination, against employees who are found to have violated University policy. The University generally determines which policies and procedures will be followed based on the employment status of the employee being disciplined (e.g., faculty, staff, student, graduate student). The policies and procedures (including steps and anticipated timelines) applicable to disciplinary processes may be found here:

Staff employees: Human Resources Policies
(policy.tennessee.edu/hr_policy/); HR0580, Code of Conduct
(policy.tennessee.edu/hr_policy/hr0580/); and HR0525,
Disciplinary Action (policy.tennessee.edu/hr_policy/hr0525/)

THE UNIVERSITY OF TENNESSEE
POLICY ON SEXUAL MISCONDUCT, RELATIONSHIP VIOLENCE, STALKING, AND RETALIATION
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Faculty: BToo6, Board of Trustees Policies Governing Academic Freedom, Responsibility, and Tenure (policy.tennessee.edu/bot_policy/bt0006/); Faculty Handbook (provost.utk.edu/faculty-handbook/)

Student employees: Hilltopics (hilltopics.utk.edu/campus-policies-procedures/)

In the event that employment status is unclear, (e.g., the employee has more than one status), the appropriate administrator will determine which policies and procedures are applicable.

If the Respondent is someone not affiliated with the University (that is, not an employee or student), the University's action will be decided based on the facts of each case.