

Sexual Misconduct: 6:03:00:00

Policy Area: Sex Discrimination, Sexual Harassment and Sexual Misconduct Policies

Applicable Divisions: TCATs, Community Colleges, Universities, and System Office

I. Purpose

It is the intent of the Tennessee Board of Regents that the institutions under its jurisdiction shall fully comply with Title IX of the Education Amendments of 1972, §485(f) of the HEA, as amended by §304 of the Violence Against Women Reauthorization Act of 2013, the regulations implementing these Acts found at 34 CFR §668.41, §668.46, and Appendix A to Subpart D of Part 668. This policy is adopted specifically to address the offenses defined herein. All other sexual harassment is also strictly prohibited and any allegations of such shall be governed by TBR Guideline P-080, and the applicable institutional policy.

The Tennessee Board of Regents intends for each institution to provide a single, easily accessible and user-friendly document to advise students, employees, and others affected by sexual misconduct of each institution's rules and procedures. Institutions under the Tennessee Board of Regents system shall ensure that the sexual misconduct policy is in a format or formats that make it readily available. The following policy and procedures are adopted by the Board to assist the institutions in such compliance.

II. Definitions

For the purpose of this policy, the following definitions shall apply:

- **Consent** – an informed decision, freely given, made through mutually understandable words or actions that indicate a willingness to participate in mutually agreed upon sexual activity. Consent cannot be given by an individual who is asleep; unconscious; or mentally or physically incapacitated, either through the effect of drugs or alcohol or for any other reason; or, is under duress, threat, coercion, or force. Past consent does not imply future consent. Silence or an absence of resistance does not imply consent. Consent can be withdrawn at any time.
- **Dating violence** – violence against a person when the accuser and accused are dating, or who have dated, or who have or had a sexual relationship. “Dating” and “dated” do not include fraternization between two (2) individuals solely in a business or non-romantic social context.

Violence includes, but is not necessarily limited to,

- (1) inflicting, or attempting to inflict, physical injury on the accuser by other than accidental means;
- (2) placing the accuser in fear of physical harm;
- (3) physical restraint;

- (4) malicious damage to the personal property of the accuser, including inflicting, or attempting to inflict, physical injury on any animal owned, possessed, leased, kept, or held by the accuser; or,
- (5) placing a victim in fear of physical harm to any animal owned, possessed, leased, kept, or held by the accuser.

- **Domestic violence** – violence against a person when the accuser and accused:

- (1) Are current or former spouses;
- (2) live together or have lived together;
- (3) are related by blood or adoption;
- (4) are related or were formally related by marriage; or,
- (5) are adult or minor children of a person in a relationship described above.

Domestic violence includes, but is not necessarily limited to, the following:

- (1) inflicting, or attempting to inflict, physical injury on the accuser by other than accidental means;
- (2) placing the accuser in fear of physical harm;
- (3) physical restraint;
- (4) malicious damage to the personal property of the accuser, including inflicting, or attempting to inflict, physical injury on any animal owned, possessed, leased, kept, or held by the accuser; or,
- (5) placing the accuser in fear of physical harm to any animal owned, possessed, leased, kept, or held by the accuser.

- **Sexual assault** – the nonconsensual sexual contact with the accuser by the accused, or the accused by the accuser when force or coercion is used to accomplish the act, the sexual contact is accomplished without consent of the accuser, and the accused knows or has reason to know at the time of the contact that the accuser did not or could not consent. Sexual contact includes, but is not limited to, the intentional touching of the accuser’s, the accused’s, or any other person’s intimate parts, or the intentional touching of the clothing covering the immediate area of the accuser’s, the accused’s, or any other person’s intimate parts, if that intentional touching can be reasonably construed as being for the purpose of sexual arousal or gratification.

- **Stalking** – a willful course of conduct involving repeated or continuing harassment of another individual that would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed, or molested, and that actually causes the accuser to feel terrorized, frightened, intimidated, threatened, harassed, or molested. Harassment means conduct directed toward the accuser that includes, but is not limited to, repeated or continuing unconsented contact that would cause a reasonable person to suffer emotional distress, and that actually causes the accuser to suffer emotional distress. Harassment does not include constitutionally protected activity or conduct that serves a legitimate purpose.

III. Prohibition of Sexual Misconduct

Sexual misconduct is a form of sex discrimination prohibited by Title IX. TBR is committed to helping its institutions rid their campuses of any and all acts of sexual misconduct and discrimination. As set forth in this policy, sexual misconduct includes dating violence, domestic violence, stalking, and sexual assault. TBR and its institutions strictly prohibit these offenses. Any allegation of sexual misconduct as defined herein will be investigated and adjudicated according to this policy. Each institution shall adopt its own policy that is consistent with this policy.

A. Scope of the Policy

1. These procedures shall be utilized by any employee or student who has been a victim of sexual misconduct.
2. Former employees or students may file complaints concerning conduct which took place during the time of employment or enrollment and the conduct has a reasonable connection to the institution.
3. Any employee or student who has knowledge of an act of sexual misconduct against another person shall report the crime to campus security and/or the institution's Title IX coordinator subject to the confidentiality policy set forth below.
4. This policy applies to all third parties. An example of a third party is a vendor with whom the institution contracts to provide services.
5. This policy applies to all students and employees, regardless of sexual orientation or gender identity.

B. Title IX Coordinators

Each institution shall designate one Title IX Coordinator. Institutions may designate deputies to assist the Title IX Coordinator; however, the Title IX Coordinator shall be responsible for overseeing all Title IX incidents reported to the institution and for implementation of this policy. It is the intent of TBR that each Title IX Coordinator will have the ability, opportunity, and responsibility to identify and address any systemic gender-based harassment, discrimination, or misconduct. Each institution shall clearly identify its Title IX Coordinator's name, contact information, and a comprehensive list of the Title IX Coordinator's duties. Each institution shall initiate a campaign to inform all students, faculty, and staff of such information. In addition, each institution shall report at the beginning of each new school year to TBR's Office of General Counsel the name of, and contact information for, the institution's Title IX Coordinator.

IV. Reporting Sexual Misconduct

A. Confidentiality Policy

Each institution shall adopt a confidentiality policy that clearly sets forth a victim's options for reporting sexual misconduct. TBR encourages victims of sexual misconduct to talk to someone about what happened, whether they want their report to be investigated or not. Institutions should offer

victims someone to talk to confidentiality, so that they can get the support they need. Therefore, each institution shall clearly identify, by name and contact information, those employees to whom a student can disclose sexual misconduct in confidence. Institutions shall also either:

1. Clearly identify responsible employees who must report incidents to the Title IX coordinator; or
2. Clearly state that all other employees of the institution are required to report any allegation of sexual misconduct to the Title IX Coordinator.

For employees required to report allegations of sexual misconduct to the Title IX Coordinator, those employees shall be trained on their responsibility to report. The training shall include the name and contact information of the person to whom they should report the allegation. Employees required to report shall also be trained to inform victims of their obligation to report as soon as the employee realizes the victim is about to report an incident of sexual misconduct.

B. Reporting Pursuant to the Nottingham Act

Unless the victim of a sexual assault does not consent to the reporting of an offense, the chief security officer or chief law enforcement officer of each institution shall immediately notify the local law enforcement agency with territorial jurisdiction over the institution if the officer is in receipt of a report from the victim alleging that any degree of rape has occurred on the property of the institution. The chief security officer or chief law enforcement officer shall designate one (1) or more persons who shall have the authority and duty to notify the appropriate law enforcement agency in the absence of the chief security officer or chief law enforcement officer. In the case of an alleged rape, the institution's law enforcement agency shall lead the investigation. After notifying the local law enforcement agency, the institution shall cooperate in every respect with the investigation conducted by the law enforcement agency. T.C.A. § 49-7-129.

If the victim does not consent to the reporting, the chief security officer or chief law enforcement officer of each institution shall not report the offense to the local law enforcement agency. T.C.A. § 49-7-2207; Public Acts 2005, Chapter 305.

C. How to File a Report of Sexual Misconduct

TBR institutions shall clearly identify formal reporting options for Complainant of sexual misconduct. Formal reporting options may include criminal complaints, institutional complaints, anonymous complaints, and alternatives to reporting, such as privileged or confidential disclosures. Policies shall explain how each of these formal reporting options work and include contact information for the people to whom a report can be made. Subject to the institution's confidentiality policy, the Title IX Coordinator shall be notified of all complaints of sexual misconduct.

V. Investigation and Outcomes A.

Institutional Procedures

Each institution shall adopt procedures that are consistent with this policy and that clearly explain the institution's process for investigating and resolving complaints of sexual misconduct. The procedures shall include the specific rights outlined in this policy and shall be clearly communicated to all students, faculty, and staff. At a minimum, each institution's procedures shall require the following:

1. Each institution shall attempt to get the Complainant to provide the complaint in writing. The complaint shall include the circumstances giving rise to the complaint, the dates of the alleged occurrences, and names of witnesses, if any. The Complainant may fill out a complaint form or submit a detailed written report of the incident. When the Complainant chooses not to provide or sign a written complaint, the matter will still be investigated and appropriate action taken;

2. Complaints made anonymously or by a third party must also be investigated to the extent possible;

3. All proceedings will include a prompt, fair, and impartial investigation and result. It is the intent of the Tennessee Board of Regents that institutions shall provide the respondent and complainant equitable rights during the investigative and institutional hearing processes as further described in this policy;

4. The complainant and respondent shall be provided with the same opportunities to have others present during any proceeding, including the opportunity to be accompanied to any related meeting which they are allowed to attend by the advisor of their choice. Nothing in this policy shall be read to require an institution to allow the respondent to attend an interview of the complainant or other witnesses;

4. The institution shall not limit the choice of advisor for either the complainant or respondent;

5. The Complainant and Respondent will be simultaneously notified in writing of the result of the investigation, the institutional hearing, and any disciplinary matters, unless the complainant or respondent requests not to be informed of this information; the institution's procedures for the Respondent and the Complainant to appeal the result of the disciplinary proceeding; any change to the result of the disciplinary matter; and when such results become final;

6. The Complainant and the Respondent shall be timely notified of all meetings which they are allowed to attend and will be provided with timely access to any information that will be used during any disciplinary proceeding;

7. The preponderance of the evidence standard (i.e., more likely than not) shall be used in all stages of the complaint proceedings, including any investigation, hearings, and disciplinary matters;

8. Mediation between the Complainant and the Respondent is never an appropriate resolution in sexual misconduct cases;

9. All investigation, hearing, and disciplinary actions shall be conducted by officials who do not have a conflict of interest or bias for or against the Complainant or the Respondent. Each institution shall adopt a process by which either party may raise issues related to potential conflicts of interest of such individuals.

10. Legal Counsel shall always be consulted prior to investigation. Hereinafter, references to "Legal Counsel" shall mean either the Office of General Counsel or on-campus legal counsel, as appropriate.

11. In situations that require immediate action because of safety or other concerns, the institution may take any administrative action which is appropriate. Examples of such interim actions include, but are not limited to:

- a. providing an escort to ensure that the Complainant can move safely between classes and activities;
- b. ensuring that the Complainant and Respondent do not attend the same classes;
- c. moving the Complainant or Respondent to a different residence hall;
- d. providing counseling services;
- e. providing medical services;
- f. providing academic support services, such as tutoring; and
- g. arranging for the Complainant to re-take a course or withdraw from a class without penalty, including ensuring that any changes do not adversely affect the Complainant's academic record.

12. Students may be placed on interim suspension under the appropriate circumstances pending the outcome of the investigation. Institutions shall follow the procedures set forth in TBR Policy 3:02:00:01—General Regulations on Student Conduct & Disciplinary Sanctions (and applicable institutional policies) before placing any student on interim suspension.

13. Institutional policies shall clearly state actions a Complainant of sexual assault should take to preserve evidence. A Complainant should not change or destroy clothes, take a shower or bath, wash his/her hands, use the toilet, brush his/her teeth, or clean up in any way. If the attack occurred in the Complainant's home or dorm room, the victim should not rearrange and/or clean up anything. It is very important for the Complainant to seek medical attention immediately so that the Complainant can be screened for sexually transmitted diseases/pregnancy/date rape drugs, obtain emergency contraception, and receive treatment for any physical injuries. Valuable physical evidence can be obtained from the Complainant and the Complainant's clothing.

14. Institutional policies shall set forth parameters and clarify what information may and may not be shared during a parallel investigation with law enforcement (e.g., via a Memorandum of Understanding with local law enforcement).

15. Institutions shall not create a separate procedure for investigating and resolving complaints of sexual misconduct involving athletes or any other subgroup of students.

B. Appointing the Investigator

All complaints of sexual misconduct shall be presented to the Title IX Coordinator or designee. After consultation with legal counsel, if the Title IX Coordinator determines that the complaint contains an allegation of dating violence, domestic violence, sexual assault, or stalking, the Title IX Coordinator shall follow the procedures set forth in this policy and the applicable institutional policy to investigate and adjudicate the complaint. The Title IX Coordinator may appoint a qualified, sufficiently trained person to investigate the allegations made in the complaint. Only one person shall be identified as the Investigator. The Investigator shall, at a minimum, receive annual training on the issues related to domestic violence, dating violence, sexual assault, and stalking and on how to conduct an investigation and hearing process that protects the safety of victims and promotes accountability.

C. What the Investigation Should Entail

Once the Investigator receives the complaint, the Investigator shall notify the Complainant in writing of his/her rights and request a meeting. The investigator shall also notify the Respondent in writing of the complaint and his/her rights and request a meeting with the Respondent.

The investigation shall include interviews with both the Complainant and Respondent, unless either declines an in-person interview. The investigation shall also include interviews with relevant witnesses named by the Complainant and Respondent or any other potential, relevant witness made known to the Investigator. The investigation shall also include the gathering and reviewing of any documentary, electronic, physical, or other type of relevant evidence. The Investigator is expected to request a list of relevant witnesses and evidence from Complainant and Respondent and take such into consideration. It is the responsibility of the Investigator to weigh the credibility of all individuals interviewed and to determine the weight to be given to information received during the course of the investigation. The Investigator shall not consider any evidence about the Complainant's prior sexual conduct with anyone other than the Respondent. Evidence of a prior consensual dating or sexual relationship between the parties by itself does not imply consent or preclude a finding of sexual misconduct.

The Investigator shall notify the Complainant, the Respondent, and all individuals interviewed during the investigation that retaliation is strictly prohibited and may be grounds for disciplinary action.

D. Outcome of Investigation

Upon completion of the investigation, the Investigator shall draft a written report that includes the allegations made by the accuser, the response of the accused, and a summary of the investigation. The report shall be delivered to the Decision Maker designated by the institution. The Decision Maker shall, at a minimum, receive annual training on the issues related to domestic violence, dating

violence, sexual assault, and stalking and on how to conduct an investigation and hearing process that protects the safety of victims and promotes accountability.

After review of the report, the Decision Maker shall make a determination as to whether or not a violation of this policy occurred. This determination shall be based on the preponderance of the evidence standard. The Decision Maker's determination and the justification shall be made in writing and provided simultaneously to the accuser and the accused. The Decision Maker's written report shall also contain a notice to both parties of their right to request an institutional hearing on the determination that a policy violation did or did not occur.

E. Institutional Hearing Procedures

Either party may request an institutional hearing on the determination that a policy violation did or did not occur by providing written notice of the request to the Investigator within ten (10) days of receipt of the Decision Maker's decision. If a request is not received within ten (10) days, the Decision Maker's determination is final. Each institution shall adopt procedures for institutional hearings that are consistent with this policy.

1. The hearing may be held before either a hearing officer or hearing committee. All hearing officers and hearing committee members shall, at a minimum, receive annual training on the issues related to domestic violence, dating violence, sexual assault, and stalking and on how to conduct an investigation and hearing process that protects the safety of victims and promotes accountability.

2. Institutions are not required to allow formal discovery to occur between the parties.

3. Each party is entitled to have an advisor of their choice available; however, institutions may limit the involvement of the advisor during the hearing or any meeting related to the hearing.

4. The hearing officer or committee shall use a preponderance of the evidence standard.

5. The hearing officer or committee shall issue a written determination as to whether or not a violation of this policy occurred and the justification for this decision.

6. Each party shall be simultaneously notified of the hearing officer or committee's decision in writing. The parties shall also be simultaneously notified of their right to appeal the hearing officer or committee's determination to the President/Director.

F. Appeal of Hearing Decision

If either party chooses to appeal the hearing officer/committee's decision, the party shall notify the Investigator in writing of their decision to appeal within five (5) business days of receipt of the hearing officer/committee's determination. If a written request for appeal is not received within five (5) days, the decision of the hearing officer/committee is final. Each institution shall adopt procedures to appeal the decision to the President/Director. The President/Director shall

simultaneously notify the parties in writing of their decision and the justification for it. The President/Director's decision as to whether or not a violation occurred is final.

G. Campus-Wide Environment

If a final decision has been made that a policy violation occurred, the Title IX Coordinator or designee shall determine any remedies needed to address the campus-wide environment. It is the intent of TBR that institutions will consider the impact of an incident of sexual misconduct on the campus as a whole and on specific groups or areas on campus. For example, if Title IX Coordinator or designee may determine that specific training is needed for a student group whose members have been accused of sexual assault.

H. Institutional Disciplinary Action

If a final decision has been made that a policy violation occurred, the Respondent shall be referred to the appropriate personnel for a determination of discipline. The appropriate personnel will be determined by the status of the Respondent. For example, if the Respondent is a student, then the matter may be referred to the student conduct officer. If the Respondent is an employee, the matter may be referred to the Human Resources Department. Each institution shall adopt a policy that clearly outlines the procedures for referring the matter to the appropriate personnel for discipline. The policy shall include, at a minimum, the following rights for the Complainant:

1. The Complainant shall receive sufficient notice of and be allowed to attend any meeting or hearing during the disciplinary process.
2. The Complainant shall be allowed to have an advisor of their choice attend any meeting or hearing.
3. The Complainant shall be allowed to testify at any hearing during the disciplinary process, even if neither party intends to call the Complainant as a witness for their case-in-chief.
4. The Complainant shall be allowed access to any evidence presented during any disciplinary meeting or hearing.
5. The Title IX Coordinator or designee shall be appointed as the Complainant's contact person for any questions or assistance during the disciplinary process.
6. The Complainant shall receive written notice of the outcome of the disciplinary process.
7. The Complainant and Respondent will be simultaneously notified in writing of the result of any proceeding related to the investigation and institutional hearing, unless the complainant or respondent requests not to be informed of this information; the institution's procedures for the Respondent and the Complainant to appeal the result of the disciplinary proceeding; any change to the result; and when such results become final.

I. Timeframe for Conducting the Investigation and Resolving the Complaint

Every reasonable effort shall be made to conclude the investigation and resolve the complaint within sixty (60) calendar days following receipt of the complaint. Within this sixty (60) day timeframe, it is expected that the Investigator will conclude the investigation, that the Investigator will present a report to the appointed Decision Maker, and that the Decision Maker will notify the parties in writing of the determination. This timeframe does not include a hearing as the result of a request by either party. If such a hearing is requested, every reasonable effort shall be made to conclude the hearing and resolve the appeal, including any appeal to the President/Director, within thirty (30) days following the institution's receipt of the party's request for a hearing. If the Investigator, Decision Maker, or Hearing Officer determine that additional time is needed, both parties shall be notified in writing of the delay, the anticipated date that the investigation or hearing will be concluded, and the reasons for such delay. If either party determines that additional time is needed, that party shall request such in writing to either the Investigator (if the Decision Maker has not yet made a determination) or Hearing Officer (if a request for hearing has been received by the institution). The written request for additional time shall include the reasons for the requested delay and the number of additional days needed. The Investigator or Hearing Officer shall make every reasonable effort to respond to the request within two (2) business days following receipt of the request and shall notify both parties in written as to whether or not the request is granted.

VI. Victim Services

TBR intends for each institution to provide resources and assistance to victims of sexual misconduct.

A. Institutions Without On-Campus Services

1. For institutions without medical, counseling, or law enforcement services on their campuses, these institutions should partner with local community organizations that may be able to provide these services for victims of sexual misconduct.
2. Any such partnership shall be clearly communicated to students, faculty, and staff.
3. Any victim presenting to an institution without on-campus resources shall be informed about the agreement and encouraged to seek services from the partnering community organizations.

B. Victim Services Policy

Each institution shall adopt a policy describing the assistance and services it provides to victims. Each policy shall include, at a minimum, the following:

1. The identity and contact information for any trained on- and off-campus advocates and counselors who can provide an immediate confidential response in a crisis situation;
2. Emergency numbers for on- and off-campus safety, law enforcement, and other first responders, including the Title IX coordinator;

3. A description of the institution's sexual assault response team (SART) process and resources SART members can offer. If an institution does not have a SART, that institution should coordinate with local, community-based SARTs and describe their process, if any are available;
4. A list of health care options, both on- and off-campus, including options to seek treatment for injuries, preventative treatment for sexually transmitted diseases, and where and how to get a rape kit or find a Sexual Assault Nurse Examiner (SANE);
5. A statement of the importance of seeking medical treatment in order to preserve evidence;
6. A list of locations, including contact information, for any available advocate (e.g., a local rape crisis center, on-campus advocacy program) who can accompany a victim to the hospital or health provider;
7. A statement that these services are available for victims of sexual misconduct whether or not a victim chooses to make an official report or participate in the institutional disciplinary or criminal process; and,
8. A description of interim measures an institution may be able to take to ensure the safety and well-being of the victim and interim measures pending the outcome of the investigation, including examples of interim measures.

C. When a Victim Presents

Each institution shall adopt a policy describing the procedures victims should follow if a crime of dating violence, domestic violence, sexual assault, or stalking has occurred. At a minimum, institutions shall provide to victims written information regarding the following:

1. The importance of preserving evidence that may assist in proving that the alleged criminal offense occurred or may be helpful in obtaining a protection order;
2. How and to whom the alleged offense should be reported;
3. Options about the involvement of law enforcement and campus authorities, including notification of the victim's option to—
 - a. Notify proper law enforcement authorities, including on-campus and local police;
 - b. Be assisted by campus authorities in notifying law enforcement authorities if the victim so chooses; and
 - c. Decline to notify such authorities;
4. Where applicable, the rights of the victim and the institution's responsibilities for orders of protection, no contact orders, restraining orders, or similar lawful orders issued by a criminal, civil, or tribal court or by the institution; and

5. Options for, and available assistance in, changing academic, living, transportation, and working situations.

VII. Education and Awareness

It is the intent of TBR that its institutions will offer educational programming and training to their students, faculty, and staff that are intended to end dating violence, domestic violence, sexual assault, and stalking.

TBR institutions shall create user friendly materials to explain the policy and how victims can get help, and provide those materials online and through other strategies appropriate for the campus. Institutional education related to sexual misconduct shall be provided to all incoming students. Institutions shall promote awareness of rape, acquaintance rape, domestic violence, dating violence, sexual assault, and stalking. Education will also include information on how to prevent sexual assault, such as information on bystander intervention, as well as how to recognize abusive behavior and avoid potential abusive relationships. Students shall be trained on the procedures for filing a report, as well as procedures for institutional disciplinary action in cases of alleged sexual violence. Institutional education will also inform students of the sanctions and protective measures that the institution may impose once a report of sexual violence has been made.

VIII. Training

TBR institutions shall develop a plan for implementing and widely publicizing the sexual misconduct policy to the entire campus and provide mandatory training on the policy. Institutions shall establish procedures for regularly reviewing, evaluating, and updating the policy. At a minimum, institutions shall provide training for the Title IX coordinator, law enforcement, responsible employees, victim advocates, and anyone else involved in responding to, investigating, or adjudicating sexual misconduct. Institutional training may provide training to all employees likely to witness or receive reports of sexual violence, including professors, school law enforcement, school administrators, school counselors, general counsels, athletic coaches, health personnel and resident advisors.

Training should ensure that responsible employees with the authority to address sexual violence know how to appropriately respond to reports of sexual violence, that responsible employees know that they are obligated to report sexual violence to the Title IX coordinator or other designated official, and that all employees understand how to respond to reports of sexual violence. Training should also ensure that professional counselors, pastoral counselors, and non-professional counselors or advocates also understand the extent to which they may keep a report confidential.

IX. Title IX Coordinator

Patricia Henderson, Student Services Coordinator, Title IX Coordinator, Tennessee College of Applied Technology Elizabethton, 426 Highway 91 North, Elizabethton, TN 37643, telephone 423-543-0070 x1004, email patricia.henderson@tcatelizabethton.edu

X. Retaliation

TBR, its institutions, officers, employees, or agents are strictly prohibited from retaliating, intimidating, threatening, coercing, or otherwise discriminating against any individual for exercising their rights or responsibilities under any provision of this policy. Retaliation will result in disciplinary measures, up to and including termination or expulsion.