

## SOUTHWEST TENNESSEE COMMUNITY COLLEGE

**SUBJECT:** Sexual Misconduct

**EFFECTIVE DATE:** May 29, 2015; Revised August 14, 2020; Revised August 16, 2021;

Revised September 3, 2021; Revised January 22, 2024 (updating job titles)

### Purpose and Scope

This policy is intended to provide a single, easily accessible and user-friendly document to advise students, employees, and others affected by Sexual Misconduct regarding Southwest Tennessee Community College's ("Southwest" or "the College") rules and procedures related to the offenses defined herein. All other forms of sex discrimination are also strictly prohibited. Allegation that are not within the scope of this policy are subject to the procedures described in *TBR Guideline P-80* as adopted and implemented by the College.

This policy applies to all Southwest faculty members, employees and students, and also extends to those with whom the College conducts business, including clients, customers, and vendors.

### Definitions

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

**Complainant** – a person who is alleged to be the victim of conduct that could constitute Sexual Misconduct. A Complainant may also be referred to as a Party.

**Consent** - an active agreement to participate in a sexual act. An active agreement is words and/or actions that indicate a willingness to participate in a sexual act. 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 Consent can be withdrawn at any time.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 individuals solely in a business or non-romantic social context.) Violence includes, but is not necessarily limited to:

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

- placing a victim in fear of physical harm to any animal owned, possessed, leased, kept, or held by the accuser.

**Domestic violence** – includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime occurs, or by any other person against an adult or youth victim who is protected from that person’s acts under the domestic or family violence laws of the jurisdiction in which the crime occurs. In cases involving allegations of mutual acts or threats of acts of violence, the investigator 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 Domestic Violence.

**Education program or activity** - education programs and activities include locations, events, or circumstances over which the College exercises substantial control over both the Respondent and the context in which the alleged Sexual Misconduct occurred. Relevant factors include whether the alleged conduct took place (i) on or off premises owned or controlled by the College, (ii) during school or work hours, (iii) as part of a College-sponsored social activity, and (iv) as part of an activity that advances an educational purpose. Education programs or activities also include any building owned or controlled by a student organization that is officially recognized the College. Whether Respondent is a College employee, and if so, the nature of the Respondent’s employment may be relevant. No single factor is determinative, including whether or not the alleged harassment took place on premises owned or controlled by the College. The Title IX Coordinator, after consulting with the Office of General Counsel, will make a fact-specific decision whether, if proven, the allegations arise out of an education program or activity. Where some alleged Sexual Misconduct took place within a College education program or activity and some took place outside of it, the Title IX Coordinator will determine whether to investigate all of the allegations in accordance with this policy. The decision-maker will also determine whether the College has established by a preponderance of the evidence that Sexual Misconduct took place in a College education program or activity.

**Force/Forced** - 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 a sexual act(s); or
- Other immediate or future physical, emotional, reputational, financial, or other harm to the person or a third person.

**Formal Complaint** - a document filed by a Complainant or signed by the Title IX Coordinator alleging Sexual Misconduct against a Respondent and requesting that the College investigate the allegation. At the time of filing a Formal Complaint, a Complainant either must be participating in or attempting to participate in the College's education program or activity implicated by the Formal Complaint.

**Incapacitation**- when a person lacks the ability to actively agree to a sexual act because the person is asleep, unconscious, under the influence of an anesthetizing or intoxicating substance such that the person does not have control over their body, is otherwise unaware that a sexual act is occurring, or their mental, physical, or developmental abilities renders them incapable of making a rational informed judgment. Incapacitation is not the same as legal intoxication. See Clarifications for more information.

**Respondent** – a person who has been alleged to be a perpetrator of conduct that could constitute Sexual Misconduct. A Respondent may also be referred to as a Party.

**Retaliation**- to intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by this policy, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing. Intimidation, threats, coercion, or discrimination, including charges against an individual for conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or Formal Complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by this policy constitutes retaliation. 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.

- The exercise of rights protected under the First Amendment and other provisions of the United States Constitution does not constitute retaliation.
- Charging an individual with a policy or conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding under this policy does not constitute retaliation.

Sexual Assault- an umbrella term that includes rape, fondling, incest, and statutory rape.

- “**Rape**” means the penetration, no matter how slight, of the vagina or anus, with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.
- “**Fondling**” means the touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of age or because of temporary or permanent mental incapacity.
- “**Incest**” means sexual intercourse between persons who are related to each other within degrees where marriage is prohibited by law.
- “**Statutory rape**” means sexual intercourse with a person who is under the statutory age of consent.

**Title IX Sexual Harassment** – conduct on the basis of sex that satisfies either of the following:

- an employee of the College conditioning provision of an aid, benefit, or service of the College on an individual’s participation in unwelcome sexual conduct (quid pro quo);
- unwelcome conduct of a sexual nature determined by a reasonable person to be so severe, pervasive and objectively offensive that it effectively denies a person equal access to the College’s education program or activity. “Reasonable person” means a reasonable person under similar circumstances as and with similar identities to the Complainant. The College 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. In no event shall Title IX sexual harassment be construed to prohibit speech protected by the First Amendment to the United States Constitution (e.g., merely offensive or insulting speech). (With respect to conduct by employees, the College prohibits sexual harassment in accordance with *TBR Guideline P-080* and the Southwest policy.) See Clarifications for more information.

**Stalking** – engaging in a course of conduct directed at a specific person that would cause a reasonable person to either (a) fear for his or her safety or the safety of others or (b) 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. For the definition of Stalking, “reasonable person” means a reasonable person under similar circumstances and with similar identities to the Complainant.

## Prohibition of Sexual Misconduct

### A. Sexual Misconduct

Sexual Misconduct is a form of sex discrimination prohibited by Title IX. The College is committed to ridding its campuses of any and all acts of Sexual Misconduct. As set forth in this policy, Sexual Misconduct includes Title IX Sexual Harassment, Dating Violence, Domestic Violence, Stalking, and Sexual Assault. The College strictly prohibits these offenses. For Southwest policies, a reference to the College includes the TBR System Office for any complaints, investigations, adjudications, and other proceedings that involve the TBR System Office.

1. Because Sexual Misconduct is a subset of the broader category of sexual harassment, not all sexual harassment allegations will be handled according to this policy. Allegations of sexual harassment that do not fall within the more limited definition of Sexual Misconduct or otherwise do not meet the criteria for filing a Formal Complaint will be handled in accordance with other policies of the College and ***TBR Guideline P-080***.
2. With respect to allegations of Sexual Misconduct against faculty and staff in which a student is not the Complainant, additional laws and policies apply, most notably Title VII and anti-discrimination policies. In such situations and absent unusual circumstances, the Complainant may file a Formal Complaint pursuant to this policy or proceed pursuant to ***TBR Guideline P-080*** and the appropriate College policy.
3. With respect to allegations of Sexual Misconduct in which a student is either a Complainant or Respondent and meets the criteria for filing a Formal Complaint, absent unusual circumstances, pursuing a Formal Complaint pursuant to this policy will be the appropriate method of addressing the allegations.
4. Upon receiving and assessing a report of Sexual Misconduct and/or sexual harassment, the Title IX Coordinator will decide whether the criteria for proceeding under this policy are met and whether another policy may apply. If there is a possibility of proceeding pursuant to ***TBR Guideline P-080*** and another Southwest policy, the Title IX Coordinator will explain the options.
5. In addition to conduct by students, faculty and staff, this policy applies to conduct by third parties. An example of a third party is a vendor with whom the College contracts to provide services.
6. This policy applies to all students and employees, regardless of sexual orientation or gender identity.

### B. Title IX Coordinator

The Title IX Coordinator for the College is the Chief of Staff. The Office of the Chief of Staff is located on the Union Avenue Campus, Parrish Building, Room 221. The Title IX Coordinator can be reached at 901-333-5005 and at [chiefofstaff@southwest.tn.edu](mailto:chiefofstaff@southwest.tn.edu). The website for the Office of the Chief of Staff can be found at <https://www.southwest.tn.edu/compliance/>. A Complaint can be filed on the website. A

Deputy Title IX Coordinator has the same authority under this policy as the Title IX Coordinator.

### **C. Lack of Bias and Equitable Treatment**

1. Neither the Title IX Coordinator, investigators, decision-makers, individuals designated to facilitate an informal resolution process, nor the person deciding an appeal will have a conflict of interest or bias for or against Complainants or Respondents generally, or against an individual Complainant or Respondent.
2. The Title IX Coordinator is responsible for appointing investigators, decision-makers, and appellate reviewers, and may appoint someone from another College or someone not employed by the College in order to avoid potential bias or for other reasons. In the event of potential bias of the Title IX Coordinator, or if the Title IX Coordinator believes that another person should serve in that role for other reasons, the Title IX Coordinator will report the matter to TBR.
3. The College will provide a prompt, fair, and impartial investigation, adjudication, and, if applicable, disciplinary process. Southwest will treat Complainants and Respondents equitably, which includes an objective evaluation of all relevant evidence, including both evidence that tends to prove or disprove the allegations.
4. Credibility determinations will not be based on a person's status as a Complainant, Respondent, or witness.
5. The investigation will proceed with a presumption that the Respondent is not responsible for the alleged conduct unless and until a determination of responsibility for a violation of this policy is made at the conclusion of the decision-making process. The burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rests with the College. The parties do not carry the burden of proof. The standard that the College will use to determine Sexual Misconduct is the preponderance of the evidence standard.
6. The College will provide simultaneous written notification to the Parties of (1) any initial, interim, or final decision by an official authorized to resolve disciplinary matters, (2) any available appeal procedures for that decision, (3) any change to that decision, and (4) when that decision becomes final. The Parties will receive timely and equal access to information.

## **How to Report Sexual Misconduct**

### **A. Reporting**

The College take seriously all complaints of sexual discrimination, sexual harassment, and Sexual Misconduct. This section explains the various reporting, complaint, and confidential disclosure options available to enable individuals to make informed choices about where to turn should they experience sexual discrimination, sexual harassment, or Sexual Misconduct.

1. A Sexual Misconduct report should be made to the Title IX Coordinator. Such a report can be made at any time, including during non-business hours, by using the telephone

- number, electronic mail address, or office mail address listed for the Title IX Coordinator.
2. Reports should be made directly to the Title IX Coordinator so the College can respond appropriately. Although reports and complaints of Sexual Misconduct may be made at any time, reports should be made as soon as possible so that the College is best able to address the allegation.
  3. Anyone who witnesses, experiences, or has information about possible Sexual Misconduct should take reasonable actions to prevent or stop it. This may include speaking up while the behavior is taking place or immediately afterwards, reporting the behavior (in accordance with the reporting options outlined in this policy), directly intervening when it is safe and reasonable to do so, contacting law enforcement, or other means. A person who has been subjected to any type of Sexual Misconduct need not confront the other Party. The appropriate process to address the conduct is through this or other applicable policy.

## **B. Supportive and Interim Measures**

1. After receiving a report of potential Sexual Misconduct, whether or not the report is a Formal Complaint, the Title IX Coordinator will contact the Complainant to discuss the availability of interim/supportive measures, inform the Complainant of their availability, and consider the Complainant's wishes with respect to potential interim/supportive measures. The Title IX Coordinator will also explain the process for filing a Formal Complaint.
2. The Title IX Coordinator, in conjunction with the appropriate department, may implement interim, supportive, or protective measures while assessing, investigating, and resolving the report. These interim/supportive measures are non-disciplinary, non-punitive, individualized services and are offered without fee or charge to the Complainant or Respondent before or after the filing of a Formal Complaint or where no Formal Complaint has been filed.
3. They are designed to restore or preserve equal access to the College's programs or activities without unreasonably burdening the other Party and may include measures designed to protect the safety of all Parties or the College's educational environment or deter Sexual Misconduct.
4. These measures may include, but are not limited to: mutual no-contact directives; access to counseling services and assistance in setting up an initial appointment; changing schedules, assignments, or job/study locations to lessen or minimize contact; extensions of deadlines and course-related adjustments; limiting or barring an individual's or organization's access to certain College facilities or activities; providing an escort to ensure safe movement on campus; providing academic support services, such as tutoring; arranging for a Party to re-take a course or withdraw from a class without penalty; administrative leave; leave of absence; College-imposed leave or physical separation from individuals or locations.
5. The College will attempt to maintain the confidentiality of interim/supportive measures, to the extent that it can do so without impairing its ability to effectuate the measures or to investigate and adjudicate the complaint.

### **C. Formal Complaint**

1. Any person alleging to be a victim of Sexual Misconduct that took place within an education program or activity of the College, while in the United States, may file a Formal Complaint under this policy.
2. A Complainant who would like the College to conduct an investigation and take action in accordance with this policy must file a Formal Complaint alleging Sexual Misconduct.
3. A Complainant must submit a written Formal Complaint in person, by mail, or via electronic mail to the Title IX Coordinator. The document must contain the Complainant's physical signature or a "digital signature." (A digital signature is information transmitted electronically that enables the Title IX Coordinator to determine that the Complainant is the person submitting the complaint, including, but not limited to, an email from a College account or a typed version of the Complainant's name. A digital signature need not reproduce a written signature.) A Formal Complaint cannot be submitted anonymously. Only the Title IX Coordinator can submit a Formal Complaint on behalf of another person.
4. Although the College will attempt to consider the wishes of Complainants, including that no investigation be conducted, Southwest will also consider its obligations under both TBR policy and applicable law, including Title VII of the Civil Rights Act of 1964. Thus, when the Title IX Coordinator receives a report of Sexual Misconduct, and especially when the complaint involves an employee, the Title IX Coordinator may decide to investigate the matter pursuant *to TBR Guideline P-080* and Southwest policy, even if the Complainant does not want the report investigated. If the Title IX Coordinator decides to file a Formal Complaint, the Title IX Coordinator is not a "Party" to any investigation, determination or hearing process.
5. Complainants should provide as much of the following information as possible: what happened, where, and when; names of all people involved, including witnesses (if any); supporting documentation (if any); and contact information. The College encourages reporting of Sexual Misconduct even if some or all information is unavailable or cannot be provided. The Title IX Coordinator will explain their role, the options for reporting an incident, potential available interim/supportive measures, and the available resources for assistance.

### **D. Confidential Resources (who will not share information with Title IX Coordinator)**

1. Victims of Sexual Misconduct are encouraged to talk to someone about what happened, whether they want their report to be investigated or not. Please visit the website for the College's Office of the Chief of Staff under "Related Links" for sexual assault resources. The website can be found at <https://www.southwest.tn.edu/compliance/>. Please see also the section herein titled Victims Services.
2. The resources will not report any information about an incident to the Title IX Coordinator without a Complainant's permission.
3. Counselors and health care providers not affiliated with the College will generally maintain confidentiality and not share information with the College unless the Complainant requests the disclosure and signs a consent or waiver form. However,

these resources may have reporting obligations under state or federal law. For example, healthcare providers and certain other individuals are required to notify law enforcement when a person seeks treatment for injuries related to a violent crime, including injuries resulting from Sexual Misconduct or abuse of a minor.

#### **E. Reporting by Employees**

1. All employees who learn of Sexual Misconduct (or any form of sexual harassment or sex discrimination, or retaliation) are encouraged to report such matters to the Title IX Coordinator.
2. Supervisors and managers who learn of Sexual Misconduct (or any form of sexual harassment or sex discrimination, or retaliation) must immediately report such concerns to the Title IX Coordinator.

#### **F. Anonymous and Third-Party/Bystander Reporting**

1. Third parties are encouraged to report incidents of Sexual Misconduct to the Title IX Coordinator.
2. After providing a report, third parties are not entitled to information about the College's investigation or response due to privacy concerns and applicable federal and state laws.

#### **G. Abuse of Minors**

1. Tennessee law mandates reporting by any person who has knowledge of physical or mental harm to a child if: (1) the nature of the harm reasonably indicates it was caused by brutality, abuse, or neglect; or (2) on the basis of available information, the harm reasonably appears to have been caused by brutality, abuse, or neglect. Tennessee law also mandates reporting by any person who knows or has reasonable cause to suspect that a child has been sexually abused, regardless of whether the child has sustained any apparent injury as a result of the abuse.
2. In the event of a life-threatening emergency, a report of child abuse or child sexual abuse should be made by calling 911. In other cases, a report of child abuse or child sexual abuse must be made immediately to one of the following authorities:
  - a. The Tennessee Department of Children's Services (the Central Intake Child Abuse Hotline is 1-877-237-0004);
  - b. The sheriff of the county where the child resides;
  - c. The chief law enforcement official of the city where the child resides; or
  - d. A judge having juvenile jurisdiction over the child.
3. In addition, College employees shall make a report of child abuse or child sexual abuse in connection with a College program or activity to the Title IX Coordinator. Note that a report to the College's law enforcement or security agency is not sufficient to comply with state law.

## **H. Law Enforcement**

1. The following law enforcement agencies are available for emergency response, facilitating medical transport, investigating incidents of a criminal nature, referrals, and preserving evidence. Law enforcement may be required to report potential violations of this policy to the Title IX Coordinator and to report incidents of sexual assault and other criminal acts of a serious nature to other law enforcement authorities.
2. The agencies are:
  - a. Memphis Police Department and Shelby County Sheriff Department in Shelby County and;
  - b. Fayette County Sheriff Department in Fayette County.

## **I. Reporting Pursuant to the Nottingham Act**

1. Unless the victim of a rape does not consent to the reporting of an offense, the College's Executive Director of Security will immediately notify the local law enforcement agency with jurisdiction, if the officer is in receipt of a report from the victim alleging that any degree of rape has occurred on College property. The Executive Director of Security will designate the individuals who have the authority and duty to notify the appropriate law enforcement agency in the absence of the Executive Director of Security. In the case of an alleged rape, the College's Executive Director of Security will lead the investigation. After notifying the local law enforcement agency, the College will cooperate with the investigation conducted by the law enforcement agency. T.C.A. § 49-7-129.
2. If the victim does not consent to the reporting, the College's Executive Director of Security will not report the offense to the local law enforcement agency. T.C.A. § 49-7-2207; T.C.A. § 49-7-129.

## **Additional Information**

### **A. No Retaliation**

1. Retaliation against a person who makes a report or files a complaint, participates or assists in an investigation, encourages another to file a complaint, or opposes Sexual Misconduct (or any other form of discrimination prohibited by College policy) is prohibited. Individuals must not interfere with an investigation. Retaliation will result in disciplinary measures, up to and including termination or expulsion.
2. In order to help prevent retaliation, the College will keep confidential the identity of anyone who has made a report or complaint of sex discrimination, including anyone who has filed a Formal Complaint of Sexual Misconduct, any Complainant, any Respondent, and any witness except as is required to carry out the College's responsibilities under this policy, as permitted by FERPA, or as required by law.
3. Anyone who wishes to file a complaint of retaliation should contact the Title IX Coordinator.

## **B. Emergency Removal/Administrative Leave**

1. If it appears, based on an allegation of Sexual Misconduct, that a student may constitute an immediate and direct threat to the physical health or safety of another individual, the College will conduct an individualized inquiry and risk analysis and may place the student on interim suspension on an emergency basis. If the College implements an interim suspension, the student shall be given the opportunity at the time of the decision, or as soon thereafter as reasonably possible, to contest the interim suspension. The College will follow the procedures set forth in *TBR Policy 3.02.00.01-General Regulations on Student Conduct & Disciplinary Sanctions* (and applicable Southwest policies) before placing a student on interim suspension.
2. The College may place employees on administrative leave or similar action while addressing allegations of Sexual Misconduct.
3. Visitors, vendors, and other third Parties may be removed from the premises consistent with applicable policies and procedures.

## **C. Court Orders**

Individuals may seek Orders of Protection, Restraining Orders, or other similar Orders from a court of law.

## **D. Athletes and subgroups of students**

The College does not have a separate procedure for investigating and resolving complaints of Sexual Misconduct involving athletes or any other subgroup of students.

## **E. Privileges**

Participation in the Formal Complaint process by a Complainant, Respondent, the College or other individual does not waive applicable privileges, including attorney-client privilege, doctor-patient privilege, the peer review/quality improvement privilege, etc. The holder of a privilege may waive it in certain circumstances.

## **Investigation and Outcomes**

### **A. The Office of General Counsel**

The Office of the General Counsel, through TBR, will be consulted prior to an investigation.

### **B. Intake and Assessment of Formal Complaints**

1. The Title IX Coordinator will assess the nature of reports and Formal Complaints, including whether one or more allegations meet the criteria for the filing of a Formal Complaint (e.g., whether the allegations include conduct that, if proven, took place in the United States and will constitute Sexual Misconduct in an education program or activity by a participant or someone attempting to participate in the education program or activity).

If a Formal Complaints includes some allegations that, if proved, constitute Sexual Misconduct and some that do not meet that definition, the Title IX Coordinator will decide whether all allegations will be investigated pursuant to this policy or whether the allegations will be investigated according to another policy or guideline. As appropriate, the Title IX Coordinator may initiate proceedings under another policy, refer the matter to another department, and/or inform the Complainant about the availability of other methods to address the allegations.

2. As part of the assessment, the Title IX Coordinator or designee may contact the Complainant and ask for information about the allegations. Supporting documents, such as emails, photos, text messages, and any other evidence should be preserved. If witnesses were present or have relevant knowledge, it is important to identify them, state what they may know, and inform the investigator how they can be contacted.
3. Where Formal Complaints involving more than one Complainant and/or more than one Respondent arise out of the same facts and circumstances, the Title IX Coordinator may consolidate Formal Complaints.

### **C. Notice of Allegations**

1. Upon receipt of a Formal Complaint, the Title IX Coordinator will provide written notice to known Parties. The Notice of Allegations will enable both Parties to appeal the dismissal or to proceed under another policy. The Notice of Allegations will contain:
  - a. an explanation of the investigation and grievance process, including a copy of or link to a College policy, as well as any other applicable policies;
  - b. the availability of an informal resolution process;
  - c. explanation of the allegations potentially constituting Sexual Misconduct in sufficient detail and with sufficient time to prepare a response before any initial interview. A Respondent will have at least three (3) business days after issuance of a Notice of Allegations prior to an initial interview, but depending on the nature of the allegations, additional time may be offered or requested;
  - d. the identity of the Parties involved in the incident, if known, and the date and location of the alleged incident;
  - e. a statement that the Respondent is presumed not responsible for the alleged conduct unless and until a determination of responsibility has been issued;
  - f. a statement that the Parties may have an advisor of their choice at meetings they are permitted to attend. The advisor may be, but is not required to be, an attorney. (Parties may hire their own attorneys. At a live hearing only, the College will provide advisors to Parties who do not have their own);
  - g. statements in the College's policies, procedures, or guidelines that prohibit knowingly making false statements or knowingly submitting false information during the process; and
  - h. a statement that retaliation against a person who makes a report or files a complaint, participates or assists in an investigation, encourages another to file a complaint, or opposes Sexual Misconduct is prohibited and will result in disciplinary measures, up to and including termination or dismissal.

- i. If, during the course of an investigation, the College decides to investigate allegations about the Complainant or Respondent that are not included in the Notice of Allegations, the College will provide additional written Notice of Allegations to known Parties.

#### **D. Dismissal of Formal Complaints**

1. The Title IX Coordinator will obtain advice from the Office of General Counsel before dismissing a Formal Complaint.
2. If the Title IX Coordinator concludes that the Complainant was not participating in or attempting to participate in a College education program or activity at the time of the Formal Complaint or that the conduct alleged in a Formal Complaint would not constitute Sexual Misconduct even if proved, did not occur in a College education program or activity, or did not occur against a person while in the United States, the Title IX Coordinator shall dismiss the Formal Complaint.
3. The Title IX Coordinator has discretion to dismiss a Formal Complaint or any allegations in it, if at any time during the investigation or hearing a Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the Formal Complaint or any allegations in it; the Respondent is no longer enrolled by, employed by, or associated with the College; or specific circumstances prevent the College from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations therein.
4. The Title IX Coordinator may decide to dismiss a Formal Complaint of Sexual Misconduct and refer the matter for disposition pursuant to a different policy, guideline, or process when an allegation of Sexual Misconduct is dismissed or when a Formal Complaint ceases to include an allegation of Sexual Misconduct.
5. Upon dismissal of a Formal Complaint for any reason, the Title IX Coordinator will promptly send written notice explaining the reasons for dismissal to the Parties. The dismissal notice will also explain whether the College will investigate or respond to the allegations under another policy, guideline, or process and the availability of other methods to address the allegations.

#### **E. Informal Resolution**

1. Because a full investigation and adjudication process may not be in the best interests of all concerned, the Title IX Coordinator may decide to offer an informal resolution process. The informal resolution process is designed to provide flexibility in crafting a resolution to a Formal Complaint that meets the needs of the Parties and the College. Informal resolutions may include meetings facilitated by the College or third parties, resolutions facilitated by the Title IX Coordinator without formal meetings, mediations, and/or restorative justice concepts. Disciplinary action may or may not be part of any informal resolution. Both Parties must agree in writing to participate in any informal resolution process that the Title IX Coordinator may offer.
2. An informal resolution process is only available after the filing of a Formal Complaint and prior to a determination regarding responsibility. If the Title IX Coordinator believes an informal resolution may be appropriate, the Title IX Coordinator will propose an informal resolution process in either the initial Notice of Allegations or a

- subsequent written document. The Title IX Coordinator may discuss with the Parties the details of how the process will work. The written notice will contain the allegations or refer to the Notice of Allegations, set out the informal resolution process, explain that at any time prior to agreeing to a resolution, the Complainant, Respondent, or the College may withdraw from the informal resolution process and resume the investigation and adjudication process under this policy, and identify any records that will be maintained or shared related to the process.
3. The Title IX Coordinator will not offer or facilitate an informal resolution process to resolve allegations that an employee engaged in Sexual Misconduct against a student.

## **F. Investigation of Formal Complaints**

The College will investigate all Formal Complaints, unless dismissed or resolved. During the investigation:

- a. The College will not access, consider, disclose, or otherwise use a Party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional acting in the professional's capacity and made or maintained in connection with the treatment to the Party, unless the Party voluntarily consents in writing;
- b. The investigator will conduct an investigation that is appropriate under the circumstances. The investigation will include a review of documents and physical evidence, as well as interviews with the Parties and other witnesses, unless they decline to be interviewed. The investigator may request access to premises, records, and documents deemed relevant. As the investigation progresses, the investigator may seek clarification, including during a subsequent interview, from any person participating in the investigation regarding the incident or their statement. A Party who learns or remembers any additional information should notify the investigator immediately. The Parties will have an equal opportunity to provide evidence and to identify witnesses, including fact and expert witnesses. Parties are encouraged to provide, as soon as possible, any evidence that the Party believes to be relevant and wants the investigator to consider. If at all possible, all evidence should be provided in time for the investigator to make it available for inspection and review;
- c. Although the Parties are encouraged to provide the College with information and evidence related to the allegations, the College is ultimately responsible for gathering evidence sufficient to reach a determination regarding responsibility;
- d. The College will not restrict the Parties from discussing the allegations under investigation or from gathering and presenting relevant evidence. Any restrictions on the ability of the Parties to discuss matters related to the proceeding but which are not under investigation will be explained in the Notice of Allegations;
- e. Each Party will have the opportunity to obtain and to be accompanied to a meeting or proceeding by an advisor of their choice, who may, but is not required to be, an attorney, in accordance with Section H. below regarding "Advisors;"
- f. When a Party is invited or expected to participate in a meeting, the College will provide written notice of the date, time, location, participants, and purpose of the meeting, interview, or hearing, with sufficient time for the Party to prepare to participate;
- g. Both Parties will have an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a Formal

Complaint, including evidence that is directly related to the allegations but upon which the College does not intend to rely in reaching a determination regarding responsibility. The College will include both evidence that tends to prove and disprove the allegations, whether obtained from a Party or other source, so that each Party can meaningfully respond to the evidence prior to the conclusion of the investigation;

- h. Prior to the completion of an investigation report, the College will send to each Party the evidence subject to inspection and review. Unless a Party requests that the College not do so, the College will also send the evidence to each advisor who has been identified. The College could decide to provide access to evidence through electronic means that is not available for download. In such case, the Parties and their advisors are prohibited from, directly or indirectly, photographing or reproducing such evidence (unless the Party has access to the evidence independent of the portal, e.g., documents submitted by the Party or publicly available information); and
- i. The College will provide at least ten (10) calendar days for the Parties to respond to the evidence provided for inspection and review. The investigator will share any written response with the other Party and will consider any written response prior to completing the investigative report.

## **G. Investigation Report**

1. At the conclusion of the investigation, the investigator will prepare a written report. It will:
  - a. identify the allegations;
  - b. identify relevant policies, guidelines, and other standards;
  - c. explain the procedural steps taken between receipt of the Formal Complaint and the conclusion of the investigation, including all notifications to the Parties, interviews with the Parties, interviews with other witnesses, dates of all interviews, any site visits, and the methods used to gather evidence; and
  - d. summarize the relevant evidence.
2. The written report shall not make findings of fact or conclusions regarding the application of facts to this policy.
3. At least ten (10) calendar days prior to a hearing, the investigator will send to each Party the investigation report in either electronic or hard copy, for review and written response. Unless a Party requests that the College not do so, the College will also send the investigation report to an advisor whom the Party has been identified.
4. The Parties should provide any written response as soon as possible, as the investigator may issue an amended investigation report if the investigator deems appropriate and if a Party provides comments in sufficient time for the investigator to do so. The Parties' written responses and any amended investigation report will be sent to the decision-maker.

## **H. Advisors**

1. Both the Complainant and the Respondent will be permitted to have an advisor of their choosing present during meetings where their attendance is permitted or expected. Nothing

in this policy shall be read to require that the College allow a Party to attend an interview of the other Party or of a witness.

2. The advisor may accompany and confer privately with a Party, but the advisor may not interrupt, speak on behalf of a Party, or otherwise actively participate in any meeting, except for conducting cross-examination at a live hearing.
3. An advisor's failure to comply may result in the termination of the meeting or the advisor no longer being permitted to be present.
4. TBR and Southwest personnel employed in the offices responsible for the disciplinary proceedings described in this policy, along with those in the chain of command, personnel employed by OGC, and others whose participation could create a conflict of interest with their duties are not eligible to serve as advisors. The College will, therefore, limit the choice of an advisor.
5. If there is a question or concern about a possible advisor, the Title IX Coordinator should be consulted. A Party choosing to have an attorney present as an advisor must provide advance notice so that a member of the Office of the General Counsel for TBR can attend all meetings at which an attorney will be present.

#### **I. Recordings**

1. Parties are not permitted to record any meeting conducted pursuant to this policy.
2. When a live hearing is conducted, the College will create an audio recording, audiovisual recording, or transcript and make it available to the Parties for inspection and review.

#### **J. Past Relationships and Conduct**

1. Previous sexual relationships of the Complainant and Respondent with third parties generally are irrelevant.
2. A past sexual relationship between the Complainant and Respondent may or may not be relevant. For example, past sexual encounters may provide insight on communication patterns for purposes of determining whether consent was present.
3. Questions and evidence about a Complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to Respondent and are offered to prove consent.

#### **K. Standard of Evidence**

1. In determining whether the Respondent engaged in Sexual Misconduct, the College will use the preponderance of the evidence standard of evidence in evaluating whether Sexual Misconduct occurred. A "preponderance of the evidence" means the greater weight of the evidence or that, according to the evidence, the conclusion sought by the party with the burden of proof is the more probable conclusion.
2. The burden of proof will remain with the College through the determination.

## **L. Timeline**

1. Formal Complaints typically will be resolved (exclusive of any appeals) within ninety (90) calendar days of filing.
2. Appeals will be resolved within fifteen (15) calendar days of the filing of an appeal.
3. Given the many variables and factors that may arise in such cases, additional time may be needed in some cases. Any departure from these time frames will be for good cause and communicated in writing or by email to both the Complainant and the Respondent simultaneously, along with a new timeline and explanation of the reasons. Good cause to extend the deadlines includes, but is not limited to, the absence of a Party, a Party's advisor, or witness; concurrent law enforcement activity; or the need for language assistance or the accommodation of disabilities.
4. Incompletion of the process within such time frames is not cause for dismissal of a Formal Complaint.

## **M. Parallel Investigations with Law Enforcement**

1. The filing of a police report or the pendency of civil or criminal proceedings does not preclude the College from proceeding with its investigation and determination.
2. The investigation and determination may be delayed until law enforcement has finished gathering evidence and indicated that the College may proceed with an investigation, but the College generally will not wait for the conclusion of any criminal proceeding.
3. Civil or criminal proceedings are separate and distinct from internal College proceedings, and they may or may not run parallel to one another. However, the College may be required by law to provide information in civil or criminal proceedings.
4. The College's Security Department may share information gathered during its investigation with the Title IX investigator.

## **N. Live Hearings**

1. The College will conduct a live hearing of Formal Complaints not dismissed pursuant to this policy in order to determine whether this policy has been violated. The decision-maker appointed by the Title IX Coordinator has the authority to maintain order at the hearing and make all decisions necessary for the fair, orderly, and expeditious conduct of the hearing. The decision-maker shall be the final decider concerning all aspects of the hearing, including prehearing matters and at the hearing, how evidence is examined and the order of witnesses.
2. At the request of either Party, the College will provide for the live hearing to be conducted with the Parties located in separate rooms with technology enabling the decision-maker and Parties to simultaneously see and hear the Party or the witness answering questions.
3. In cases involving more than one Respondent, any Party may request separate hearings by submitting a request at least five (5) business days before the hearing. The Title IX Coordinator will decide whether to grant the request.
4. Live hearings may be conducted with all Parties physically present in the same geographic location or, at the College's discretion, any or all Parties, witnesses and other participants

may appear at the live hearing virtually, with technology enabling participants simultaneously to see and hear each other.

5. At least ten (10) business days prior to a live hearing, the College will provide both Parties with written notice of the following:
  - a. The time, place, date of the hearing, and electronic access information, if applicable;
  - b. The name of each witness the College expects to present or be present at the hearing and those the College may present if the need arises;
  - c. The right to request a copy of the investigative file (other than portions that are protected by law or privilege), which includes all of the evidence obtained as part of the investigation that is directly related to the allegations raised in the Formal Complaint;
  - d. The right to request copies of all documents, copies of electronically stored information, and access to tangible evidence that the College has in its possession, custody, or control and may use to support claims or defenses;
  - e. The right to have an advisor of the Party's choice, who may be, but is not required to be an attorney, and that if the Party does not have an advisor present at the hearing, the College will provide an advisor of the College's choice, without fee or charge, to ask the other Party and any witnesses all relevant questions and follow-up questions on behalf of that Party;
  - f. Any Party in need of a College-provided advisor must inform the Title IX Coordinator at least five (5) business days before the hearing;
  - g. All cross-examination of any other Party or witness must be conducted by the advisor; and
  - h. Additional information may be included in the notice of hearing.
6. When notice is sent by U.S. mail or courier service, the notice is effective on the date the notice is mailed or delivered to the courier service. When notice is hand delivered by the College, notice is effective on the date that the notice is delivered to a Party. When notice is sent by email, the notice is effective on the date that the email is sent to the Parties' College-provided email account.
7. The decision-maker may conduct a pre-hearing meeting or conference with the Parties and their advisors to discuss pre-hearing issues, including any technology to be used at the hearing and the general rules governing the hearing.
8. The decision-maker may allow a temporary delay of the process or the limited extension of time frames for good cause with written notice to the Parties of the delay or extension and the reasons for the action. Good cause may include, but is not limited to, considerations such as the absence of a Party, a Party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities.
9. If a Party fails to attend a hearing, the decision-maker may proceed without that Party's participation.
10. During the hearing, the decision-maker will make evidence subject to review and inspection during the investigation phase available to give each Party equal opportunity to refer to that evidence, including for purposes of cross-examination.
11. Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the Complainant's

prior sexual behavior are offered to provide that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

12. Only relevant cross-examination and other questions may be asked of a Party or witness. Before a Complainant, Respondent, or witness answers a cross-examination or other question from someone other than the decision-maker, the decision-maker will determine whether the question is relevant and explain any decision to exclude a question as not relevant.
13. The decision-maker will not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of information protected under a legally recognized privilege, unless the person holding the privilege has waived it.
14. The decision-maker will permit each Party's advisor to ask the other Party and any witnesses all relevant questions and follow-up questions, including those challenging credibility. Such cross-examination at the live hearing will be conducted directly, orally, and in real time by the Party's advisor and never by a Party personally. Conducting cross-examination will be the advisor's only opportunity to speak. Advisors will not engage in other presentation of arguments or evidence, including opening statements, closing arguments, or direct examinations.
15. If a Party does not have an advisor at the live hearing, the College will provide without fee or charge to that Party an advisor. The College will choose the advisor.
16. (This section intentionally left blank)
17. For good cause shown, a decision-maker may permit the participation of witnesses who were not identified by the Party to the investigator, or the inclusion of evidence not provided by the Party to the investigator.
18. The College will create an audio or audiovisual recording, or transcript, of a live hearing and make it available to the Parties for inspection and review.
19. The decision-maker may dismiss the Formal Complaint or any allegations therein, if at any time during the hearing a Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw a Formal Complaint or any allegations therein, the Respondent is no longer enrolled or employed by the College, or specific circumstances prevent the College from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations therein.
20. If the decision maker dismisses the Formal Complaint during the grievance process, the decision-maker will promptly notify the Title IX Coordinator, who will promptly send written notice of the dismissal and reasons therefor simultaneously to the Parties.

## **O. Written determination**

1. Within fifteen (15) business days of the hearing, the decision-maker will issue a written determination whether the Respondent engaged in Sexual Misconduct based on a preponderance of the evidence standard. The written determination will be provided to the Parties simultaneously.
2. The determination becomes final either on the date that the College provides the Parties with a written result of an appeal, or if an appeal is available but not filed, the day after the deadline to appeal.

3. The determination will include:
  - a. Identification of the allegations potentially constituting Sexual Misconduct, as well as identification of any additional allegations that are being resolved but which do not constitute Sexual Misconduct;
  - b. A description of the procedural steps taken between receipt of the Formal Complaint and the determination, including all notifications to the Parties, interviews with Parties and witnesses, site visits, methods used to gather other evidence, and any hearings held;
  - c. Findings of fact supporting the determination;
  - d. Conclusions regarding the application of this policy, as well as any other relevant policy, guidelines, or code, to the facts;
  - e. A statement of, and rationale for, the result as to each allegation before the decision-maker, including a determination regarding responsibility;
  - f. Any disciplinary action that the decision-maker imposes on the Respondent, including referral to another process;
  - g. Any remedies that the College will provide designed to restore or preserve equal access to the Complainant; and
  - h. The permissible bases and procedures, including timelines, for appeals by the Parties.

**P. Remedies and disciplinary action following determinations of violations**

1. The College will provide remedies where a determination of responsibility for Sexual Misconduct has been made. The College will follow this policy before the imposition of any disciplinary sanctions for Sexual Misconduct that are not supportive/interim measures.
2. Remedies will be designed to restore or preserve equal access to education programs and activities and will include discipline under the applicable policies and procedures. Remedies may include verbal warnings, written warnings, final written warnings, suspension, termination of employment (including tenured faculty), non-renewal of appointment, or dismissal from Southwest
3. The College will take into consideration improvements to the campus-wide environment when instituting remedies.

**Q. Appeals/Post-determination Procedures**

1. Parties are permitted to appeal to the College's President (or other person appointed by the Title IX Coordinator) from a determination regarding responsibility (or no responsibility) and from a dismissal of a Formal Complaint or of any allegations in a Formal Complaint on the basis of:
  - a. procedural irregularity that affected the outcome of the matter;
  - b. new evidence that was not reasonably available at the time the determination or dismissal was made, but only if that new evidence could affect the outcome of the matter;
  - c. The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the outcome.

2. A Party wishing to appeal a determination regarding responsibility or the dismissal of a Formal Complaint or any allegations therein must file a written appeal with the Title IX Coordinator within seven (7) business days of the date of the determination or the dismissal. The written appeal must identify the reasons for the appeal.
3. As to all appeals, the Title IX Coordinator will:
  - a. Notify the other Party in writing when an appeal is filed;
  - b. Implement appeal procedures equally for both Parties;
  - c. Ensure that the decision-maker(s) for the appeal is not the same person as the investigator, the decision-maker, or Title IX Coordinator;
  - d. Provide each Party five (5) business days to provide a written statement in support of, or challenging, the determination.
4. The decider of the appeal will issue a written decision describing the result of the appeal and the rationale for the result, and will provide it simultaneously to the Parties.

### **Victim Services**

1. Southwest would like to assist victims of Sexual Misconduct with resources for counseling and other services:
  - a. For sexual assault resources, please visit the website for the College's Office of the Chief of Staff under "Related Links." The website can be found at the following link: <https://www.southwest.tn.edu/compliance/>.
  - b. To report a crime, please contact the College's Department of Police Services/Public Safety. The department maintains a 24-hour dispatch service. Officers on duty at night, after class hours, and on weekends are equipped with a radio/telephone.

The resources listed below are not exhaustive or limited to victims who wish to make an official report or participate in a hearing by the College, police investigation or criminal prosecution.

Office of the Title IX Coordinator	Parrish Building, 221 737 Union Avenue, Memphis, TN 38103	<a href="mailto:chiefofstaff@southwest.tn.edu">chiefofstaff@southwest.tn.edu</a> 901-333-5005
Public Safety	<p><b>Gill Campus</b> 3833 Mountain Terrace Memphis, TN 38127</p> <p><b>Union Campus</b> Parrish Building – Rm 107 737 Union Avenue, Memphis, TN 38103</p> <p><b>Macon Cove Campus</b> Farris Building 5983 Macon Cove Memphis, TN 38134</p> <p><b>Maxine Smith Center</b> 8800 East Shelby Drive Memphis, TN 38125</p> <p><b>Whitehaven Center</b> 3035 Directors Row, Bldg. 6, Memphis, TN 38131</p>	<p><a href="mailto:police@southwest.tn.edu">police@southwest.tn.edu</a> 901-333-5970</p> <p><a href="mailto:police@southwest.tn.edu">police@southwest.tn.edu</a> 901-333-5555</p> <p><a href="mailto:police@southwest.tn.edu">police@southwest.tn.edu</a> 901-333-4000</p> <p><a href="mailto:police@southwest.tn.edu">police@southwest.tn.edu</a> 901-333-6103</p> <p><a href="mailto:police@southwest.tn.edu">police@southwest.tn.edu</a> 901-333-6450</p>
Advising and Counseling	<p><b>Macon Cove Campus</b> Farris Building 5983 Macon Cove Memphis, TN 38134</p> <p><b>Union Campus</b> M Building – Rm 110 737 Union Avenue Memphis, TN 38103</p>	<p><a href="mailto:advising@southwest.tn.edu">advising@southwest.tn.edu</a> 901-333-4594</p> <p><a href="mailto:advising@southwest.tn.edu">advising@southwest.tn.edu</a> 901-333-5122</p>
Shelby County Crime Victims Center	1750 Madison Avenue Memphis, TN 38104	<a href="https://www.shelbycountyttn.gov/index.aspx?NID=239">https://www.shelbycountyttn.gov/index.aspx?NID=239</a> Phone: 901-222-3950
Shelby County Rape Crisis Center	1750 Madison Avenue Suite 102 Memphis, TN 38104	<a href="https://www.shelbycountyttn.gov/index.aspx?NID=737">https://www.shelbycountyttn.gov/index.aspx?NID=737</a> Phone: 901-222-4350
Domestic Violence Intake Center (Protective Orders)		<a href="http://www.tncourts.gov/programs/self-helpcenter/forms/order-protection-forms">http://www.tncourts.gov/programs/self-helpcenter/forms/order-protection-forms</a>

On-line Resources:

<http://tncoalition.org/> - State Coalition Against Rape  
<http://tncoalition.org/> -State Coalition Against Domestic Violence  
<http://www.thehotline.org/>- Website for LGBTQ survivors of sexual or domestic violence and minority women survivors of sexual or domestic violence  
<http://www.pandys.org/malesurvivors.html>-Website for male survivors  
<http://www.rainn.org> -Rape, Abuse and Incest National Network  
<http://www.ovw.usdoj.gov/sexassault.html>- Department of Justice  
<http://www2.ed.gov/about/offices/list/ocr/index.html>- Department of Education, Office of Civil Rights

2. Victim Policy

- A. It is very important for Complainants to seek medical attention immediately because it might be necessary to be screened for sexually transmitted diseases/pregnancy/drugs that may have been used to incapacitate, obtain emergency contraception, and receive treatment for any injuries. Valuable physical evidence can be obtained from a Complainant and a Complainant's clothing. Even those who are unsure whether to make a police report or otherwise file a complaint may wish to have a forensic examination, which will facilitate the identification and preservation of physical evidence;
- B. To help preserve evidence in the event of a sexual assault, it is important for Complainants not to change clothes or bedding and not take a shower, douche, use the toilet, brush their teeth, or clean up until police have had a chance to gather evidence. However, if a Complainant has already changed clothes or cleaned up/showered, evidence may still be collected. Complainants should leave any clothes or bedding unfolded and undisturbed, if possible. If clothing or bedding must be moved, items should be kept separate to prevent transfer of body fluids or other trace evidence. Parties should not delete or destroy any text messages, social media, emails, voicemails, written notes, or any other documents that may be relevant.
- C. The Memphis and Shelby County Crime Victims and Rape Crisis Center can be reached at 901-222-3950. In Fayette County, services are provided through Fayette Cares. The telephone number to Fayette Cares is 901-465-3802.
- D. Services are available for victims of Sexual Misconduct whether or not a victim chooses to make an official report or participate in the College's disciplinary or criminal process.

**Education, Training, and Awareness**

- A. The College offers educational programming and training to its students, faculty, and staff, which are designed to hopefully end Sexual Misconduct.
- B. The College will review, evaluate, and update its Sexual Misconduct policy as needed
- C. The Title IX Coordinator, investigators, decision-makers, College-provided advisors, any person designated to facilitate an informal resolution process, and any person designated to resolve an appeal receives training on the definition of Sexual Misconduct.

- D. Training does not rely on sex stereotypes and will promote impartial investigations and adjudications of Formal Complaints.
- E. The College notifies applicants for admission and employment, students and employees, that it does not discriminate on the basis of sex in its education programs and activities and, the name, title, office address, electronic messaging link, and telephone number of the Title IX Coordinator is provided in that notification.

### **Policy Effective Date**

- A. This policy, with revisions, originally became effective August 14, 2020. Additional revisions became effective August 16, 2021.
- B. If any provision of the Title IX regulations on which this policy is based is enjoined or held invalid as it applies to the College or the Title IX regulations' application to any person, act, or practice is enjoined or held invalid as it applies to the College, the remainder of this policy or the application of its provisions to any person, act, or practice shall not be affected thereby.
- C. For conduct that occurs across multiple versions of this policy, complaints of Sexual Misconduct will be addressed utilizing the procedures outlined in the version of this policy in effect as of the date of the Notice of Allegations. The "Definitions" and "Clarifications" sections of the policy in effect as of the date of the alleged incident will be used. Complaints and reports of conduct spanning more than one version of the policy will be addressed using the "Definitions" and "Clarifications" sections in the version of the policy in effect at the time of the most recent alleged incident.

### **Clarifications**

#### **A. Consent**

- 1. Consent means an active agreement to participate in sexual activity. An active agreement is words and/or conduct that communicate a person's willingness to participate. The following individuals cannot give valid Consent:
  - a. 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;
  - b. A person who is Forced; or
  - c. 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.
- 2. During a sexual encounter, each person has responsibility for obtaining Consent from the other person. During an investigation, the College has the burden of obtaining evidence whether Sexual Misconduct occurred without Consent. During any hearing, the College has the burden of proving that Sexual Misconduct occurred without Consent. (In other words, it is not a Respondent's burden to prove Consent during an investigation or hearing). Whether a person has communicated Consent generally is evaluated from the perspective of what a reasonable person who perceived the individual's words and/or nonverbal

conduct would have understood; however, in the context of a relationship that has involved sexual activity and a pattern of communicating Consent, whether Consent has been communicated may be evaluated based on a subjective standard (i.e., what did the specific person who initiated the sexual activity conclude based on the pattern of communication?).

3. A verbal “no” (or words equivalent to “no”) or the nonverbal communication of “no,” even if it sounds or appears insincere or indecisive, means that Consent has not been communicated, or if previously communicated, has been withdrawn. The absence of a verbal “no” or the absence of a nonverbal communication of “no” does not necessarily mean that Consent has been communicated.
4. Consent must exist from the beginning to the end of each sexual encounter and for each sexual act that occurs during a sexual encounter. A person has a right to change their mind; thus, Consent may be withdrawn at any time. A withdrawal of Consent is communicated through clear words and/or conduct that indicate that a person no longer agrees to participate in sexual activity. Once a person’s withdrawal of Consent has been communicated, the other person must cease the sexual act for which Consent was withdrawn and must obtain Consent before reinitiating that sexual act. Consent is automatically withdrawn when a person becomes incapacitated or is forced to participate in sexual activity.
5. Consent to one type of sexual activity (e.g., oral sex) does not constitute or imply Consent for another type of sexual activity (e.g., vaginal intercourse), whether during a sexual encounter or based on a previous sexual encounter.
6. The following do not communicate a person’s willingness to participate in sexual activity:
  - a. Silence, unless accompanied by non-verbal conduct conveying a willingness to participate in sexual activity;
  - b. Consent communicated by the person on a previous occasion;
  - c. Consent communicated to a third person;
  - d. The person’s failure to resist physical force (however, for purposes of the Policy, the person’s resistance to physical force will be viewed as a clear demonstration that the person has not communicated Consent);
  - e. A current or previous dating, romantic, intimate, or sexual relationship with the other person;
  - f. Currently or previously cohabitating with the other person;
  - g. The person’s attire, reputation, giving or acceptance of gifts, sexual arousal, or extension or acceptance of an invitation to go to a private residence, room, or other location.
  - h. One’s own use of alcohol, drugs, or other substances does not diminish one’s responsibility to obtain Consent from the other person. Another person’s use of alcohol, drugs, or other substances does not diminish one’s responsibility to obtain Consent from that person.

## **B. Force**

Force includes physical force (such as pushing, hitting, pinning down), threats (direct or indirect expressions of intent to inflict harm to self or others), intimidation (implied or indirect threats), and/or other forms of coercion. To coerce is to attempt to cause another person to act

or think in a certain way by use of force, pressure, threats, or intimidation; to compel is to coerce.

### **C. Incapacitation**

1. A person violates this policy when they engage in sexual activity with another person who is incapacitated under circumstances in which a reasonable person would have known the other person to be Incapacitated. For evaluating Incapacitation, a “reasonable person” means a sober, objectively reasonable person in the same situation, with ordinary sensitivities, and with similar identities as the Respondent.
2. 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.
3. Blacking out is an amnesia-like state that may be brought on by drugs, heavy drinking, or intoxication; blacking out is not necessarily incompatible with the ability to engage in simple or even complex behavior. After blacking out, a person has no recollection of all or part of the events that occurred during the blackout. There is a distinction between passing out (falling asleep or becoming unconscious) due to drug or alcohol use and blacking out in that a person in a blackout remains conscious and operative.
4. Incapacitation or Incapacitated means a person’s inability, temporarily or permanently, to communicate a willingness to participate in an activity (e.g., sexual activity) 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 (including “date rape” drugs) are common causes of Incapacitation. When alcohol or drugs are involved, Incapacitation is a state beyond mere drunkenness or intoxication.

**D. Severe and Pervasive**

Severe and Pervasive. Severe means behavior that is more than antagonistic, non-consensual, and crass, even where the behavior is based on differences in sex or gender. Pervasive means systemic or widespread, and it necessarily involves more than one incident of sexual harassment.

Source of Policy: Revised Title IX Regs, TBR  
5:00:00:00/15  
Related Policy: 5:01:02/28 5:01:02:00/29

Responsible Administrators:  
Chief of Staff; VP of HR; VP of SA

TBR Policy Reference: 6.03.00.00  
TBR Guideline Reference: 6.03.00.00

Approved:  Date: January 22, 2024  
President