

Sexual Misconduct Policy and Complaint Resolution Procedures

I. POLICY STATEMENT

Trevecca Nazarene University (University) is committed to providing and maintaining a healthy learning and working environment for all students, staff, faculty, and other members of the University's community, free of discrimination and all forms of sexual and gender-based discrimination, harassment and violence (“Sexual Misconduct”). Sexual Misconduct diminishes the dignity and impedes the academic freedom of members of the University community.

In accordance with the University’s Wesleyan values, its role as an institution of higher education, and both state and federal law, the University will not tolerate any form of Sexual Misconduct and is committed to taking immediate responsive action to prevent and eliminate all forms of Sexual Misconduct. Such acts corrupt the integrity of the educational process, are contrary to the mission and values of the University and are against University policy.

In compliance with Title IX and its implementing regulations, the University has implemented this policy to eliminate, prevent and address conduct that constitutes Sexual Misconduct.

II. SCOPE

This policy applies to students, faculty, staff, administrators, and third parties on campus, including visitors, guests, and the agents, representatives and employees of suppliers or (the “University Community.”) This policy applies regardless of national origin, immigration status, or citizenship status. The University’s prohibition on Sexual Misconduct extends to all aspects of its educational programs and activities, including, but not limited to, admissions, employment, academics, and student services.

The University has jurisdiction over complaints regarding Sexual Misconduct that occurred on campus, during or at an official University program or activity (regardless of location), or off campus when the conduct could create a hostile environment on campus. The University will investigate all complaints made under this policy and, if necessary, take action to prevent the recurrence of Sexual Misconduct and remedy its effects.

III. TITLE IX STATEMENT AND COORDINATOR

It is the policy of the University to comply with Title IX of the Education Amendments of 1972 and its implementing regulations, which prohibit discrimination based on sex in the University’s educational programs and activities, including employment and admissions. Title IX and its implementing regulations also prohibit retaliation for asserting claims of Sex Discrimination. The University has designated the following Title IX Coordinator to coordinate its compliance with Title IX, receive inquiries regarding Title IX, including complaints of Sexual Misconduct:

Jamie Cathcart
Title IX Coordinator
Trevecca Nazarene University
333 Murfreesboro Rd.

Nashville, TN 37210-2877
615-248-7796
TIX@trevecca.edu

The Title IX Coordinator is located in the Office of Human Resources, which is located in the Martin Building, ground level.

In addition to the reporting options under this policy, any person may also file a complaint of Sex Discrimination with the United States Department of Education's Office for Civil Rights by visiting www2.ed.gov/about/offices/list/ocr/complaintintro.html or by calling 1-800-421-3481.

IV. SEXUAL MISCONDUCT

A. Definition of Sexual Misconduct

This policy prohibits Sexual Misconduct. "Sexual Misconduct" is an umbrella term covering Sex Discrimination, Sexual Harassment, Sexual Violence, Sexual Exploitation, Domestic Violence, Dating Violence, Stalking, and Retaliation. Sexual misconduct does not depend on the gender, gender identity, or sexual orientation of the alleged victim and alleged perpetrator. Thus, Sexual Misconduct can occur between persons who consider themselves to be of the same gender, the opposite gender, or to otherwise have differing gender identities. This term will be used throughout the remainder of this policy and the Complaint Resolution Procedures when collectively referring to these types of conduct.

B. Sex Discrimination

The University prohibits discrimination on the basis of sex in all the University's programs and activities. Sex Discrimination occurs when a person is excluded from participation in, or denied the benefits of, any University program or activity because of their sex. Sex Discrimination includes materially adverse treatment or action based on a person's sex, pregnancy status, and/or failure to conform to stereotypical notions of masculinity and femininity (so called "gender stereotyping").

Sex Discrimination includes gender-based harassment, which may include acts of aggression, intimidation, or hostility based on actual or perceived sex, sexual orientation, gender identity, gender expression, or gender stereotyping. Gender-based harassment usually does not involve conduct of a sexual nature. Gender-based harassment violates this policy when it denies or limits a person's ability to participate in or benefit from the University's programs and activities and meets the thresholds set forth in Section IV.C.1-3 below.

Specific examples of conduct that may constitute Sex Discrimination include:

- Giving unequal pay, promotions, or other job benefits on the basis of gender.
- Allowing a person's gender to influence the grade conferred in a class.
- Denying persons access to a given degree or major because of their gender.
- Requiring a pregnant student to verify pregnancy-related absences with a doctor's note when such verification is not required of students with other medical conditions.

- Excluding a person from participation in a University sponsored activity based on stereotypical notions of how a person of a given gender should look, speak, or act.
- Demeaning another person on the basis of gender.
- Directing abusive or threatening behavior at a person on the basis of gender.

Sex Discrimination also includes conduct that meets the definitions of Sexual Harassment and Sexual Violence, as set forth below.

C. Sexual Harassment

Sexual Harassment is any unwelcome conduct of a sexual nature. Sexual Harassment constitutes Sex Discrimination when it denies or limits a person's ability to participate in or benefit from the University's programs and activities. Sexual Harassment can include sexual advances, requests for sexual favors, and other verbal, non-verbal, physical, or visual conduct of a sexual nature. Sexual Harassment rises to the level of Sex Discrimination and is prohibited by this policy when:

1. Submission to or rejection of such conduct is made, either explicitly or implicitly, a term or condition of any aspect of an individual's employment, education, or participation in University activities;
2. Submission to or rejection of such conduct by a person is used or threatened to be used as a basis for financial, academic, or employment decisions affecting that individual; or
3. Such conduct is so severe, persistent, or pervasive that it substantially interferes with an individual's performance at work or in academic or extra-curricular activities, thereby creating what a reasonable person would perceive as a hostile employment, education, or living environment (i.e., a "hostile environment").

In determining whether a hostile environment exists, the University will consider the totality of circumstances, including factors such as the actual impact the conduct has had on the complainant; the nature and severity of the conduct at issue; the frequency and duration of the conduct; the relationship between the parties (including accounting for whether one individual has power or authority over the other); the respective ages of the parties; the context in which the conduct occurred; and the number of persons affected. The University will evaluate the totality of circumstances from the perspective of a reasonable person in the alleged victim's position. A person's adverse subjective reaction to conduct is not sufficient, in and of itself, to establish the existence of a hostile environment.

The University encourages members of the University Community to report any and all instances of Sexual Harassment, even if they are unsure whether the conduct rises to the level of a policy violation.

Some specific examples of conduct that may constitute Sexual Harassment if unwelcome include:

- Unreasonable pressure for a dating, romantic, or intimate relationship or sexual activity

- Unwelcome kissing, hugging, or massaging
- Sexual innuendos, jokes, or humor
- Displaying sexual graffiti, pictures, videos, or posters
- Using sexually explicit profanity
- Asking about, or telling about, sexual fantasies, sexual preferences, or sexual activities
- E-mail and Internet use that violates this policy
- Leering or staring at someone in a sexual way, such as staring at a person's breasts or groin
- Sending sexually explicit emails, text messages, or social media posts
- Commenting on a person's dress in a sexual manner
- Giving unwelcome personal gifts such as lingerie that suggest the desire for a romantic relationship
- Requesting sexual favors in return for employment or academic rewards or threats if sexual favors are not provided
- Disseminating sexual pictures or videos of another person without consent regardless of whether the pictures or videos were obtained with consent
- Sexual Violence (as defined below)

D. Sexual Exploitation

Sexual exploitation means taking sexual advantage of another person for the benefit of oneself or a third party when consent is not present. This includes, but is not limited to, the following actions (including when they are done via electronic means, methods, or devices):

- Sexual voyeurism or permitting others to witness or observe the sexual or intimate activity of another person without that person's consent
- Indecent or lewd exposure or inducing others to expose themselves when consent is not present
- Recording any person engaged in sexual or intimate activity in a private space without that person's consent
- Distributing personal sexual information, images, or recordings about another person without that person's consent (applies even if the videos were obtained with consent)
- Recruiting, harboring, transporting, providing, or obtaining another person for the purpose of sexual exploitation
- Inducing incapacitation in another person with the intent to engage in sexual conduct, regardless of whether prohibited sexual conduct actually occurs
- Prostituting another person

- Knowingly transmitting a sexually transmitted disease to another person through sexual activity when that person has not consented to engaging in such sexual activity despite being expressly, verbally, and understandably informed of the sexually transmitted disease

E. Sexual Violence

This policy prohibits all forms of Sexual Violence, including sexual assault, sexual battery, sexual coercion, sexual exploitation, and rape. Sexual Violence includes physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent because of his or her temporary or permanent mental or physical incapacity, because he or she is below the minimum age of consent in the applicable jurisdiction, or because of his or her incapacitation due to the use of drugs and/or alcohol. A single instance of Sexual Violence may be sufficiently severe to deny or limit a person's ability to participate in or benefit from the University's programs or activities, and, therefore, constitute Sex Discrimination.

Verbal misconduct or any misconduct that does not involve unwanted sexual touching does not constitute Sexual Violence under the University's policy but may constitute sexual harassment or another form of misconduct. Likewise, consensual premarital sexual contact, while not a violation of the University's policy against Sexual Misconduct, conflicts with the University's behavioral expectations.

Some examples of Sexual Violence include:

- Sexual assault: sexually penetrating, attempting to sexually penetrate, or having sexual contact with another individual by force or threat of force; without consent; or where the individual is incapacitated.
- Rape: sexual penetration (anal, vaginal, or oral), no matter how slight, with any object or body part without consent
- Nonconsensual touching of another person in a sexual manner
- Intentional contact of a sexual nature with the body parts of another, causing another to touch one's intimate parts, or disrobing or exposure of another without consent

F. Consent

Lack of consent is a critical factor in determining whether sexual violence/sexual assault has occurred. Consent is the voluntary agreement to engage in sexual activity. It is informed, freely given, and mutually understood. Consent requires an affirmative act or statement by each participant. Consent is not passive. A verbal "no" constitutes lack of consent, even if it sounds insincere or indecisive.

- If coercion, intimidation, threats, and/or physical force are used, there is no consent.
- If a person is mentally or physically incapacitated or impaired by alcohol or drugs such that the person cannot understand the fact, nature, or extent of the sexual situation, there is no consent.
- If a person is asleep or unconscious, there is no consent.

- Consent to past sexual activity does not imply future consent.
- Consent to engage in sexual activity with one person does not constitute consent to engage in sexual activity with another.
- Consent can be withdrawn by verbal or physical conduct that a reasonable person would understand to indicate a desire to stop or not engage in the sexual conduct at issue. A person is deemed not to have consented to any sexual activity that occurs after he or she withdraws consent.
- Consent to one form of sexual activity does not imply consent to other forms of sexual activity.

The University promotes a biblical sexual ethic that reserves consenting intimate sexual expression within a marriage between a man and a woman. Intimate sexual expression outside the biblical boundary of marriage may increase the risk of miscommunication about consent and is a violation of University policy.

G. Coercion

Coercion is direct or implied threat of force, violence, danger, hardship, or retribution sufficient to persuade a reasonable person of ordinary susceptibility to perform an act which otherwise would not have been performed or acquiesce in an act to which one would otherwise not have submitted. Coercion can include unreasonable and sustained pressure for sexual activity.

Coercive behavior differs from seductive behavior based on the type of pressure someone uses to get consent from another. A person's words or conduct cannot amount to coercion unless they wrongfully impair the other's freedom of will and ability to choose whether or not to engage in sexual activity. When a person makes it clear that the person does not want to engage in sexual activity, that the person wants to stop, or that the person does not want to go past a certain point of sexual interaction, continued pressure beyond that point may be coercive.

H. Incapacitation

Incapacitation is a state where an individual cannot make an informed and rational decision to consent to engage in sexual activity because the individual lacks conscious knowledge of the nature of the act (e.g., to understand the "who, what, where, when, why or how" of the sexual interaction) and/or is physically or mentally helpless. An individual is also considered incapacitated, and therefore unable to give consent, when asleep, unconscious, or otherwise unaware that sexual activity is occurring.

Incapacitation can only be found when the respondent knew or should have known that the complainant was incapacitated when viewed from the position of a sober, reasonable person. One's own intoxication is not an excuse for failure to recognize another person's incapacitation.

Incapacitation may result from the use of alcohol and/or other drugs; however, consumption of alcohol or other drugs, inebriation, or intoxication alone are insufficient to establish incapacitation. Incapacitation is beyond mere drunkenness or intoxication. The impact of alcohol or drugs varies

from person to person, and evaluating incapacitation requires an assessment of how consumption of alcohol and/or drugs impacts an individual's:

- Decision-making ability
- Awareness of consequences
- Ability to make informed judgments
- Capacity to appreciate the nature of circumstances of the act.

No single factor is determinative of incapacitation. Some common signs that someone is incapacitated may include: slurred speech, confusion, shaky balance, stumbling or falling down, vomiting, and unconsciousness.

Sexual contact while under the influence of alcohol or other drugs poses a risk to all parties. Alcohol and drugs impair a person's decision-making capacity, awareness of the consequences, and ability to make informed judgments. It is especially important, therefore, that anyone engaging in sexual activity be aware of the other person's level of intoxication. If there is any doubt as to the level or extent of the other person's intoxication or impairment, the prudent course of action is to forgo or cease any sexual contact or activity.

I. Domestic Violence, Dating Violence, and Stalking

Domestic Violence, Dating Violence, and Stalking are considered to be a violation of this policy, no matter the motivation behind them. Domestic and dating violence (often called "intimate partner violence") can vary in frequency and severity. It occurs on a continuum, including physical violence, sexual violence, and emotional violence and stalking. The abuse can occur in person or electronically. It often takes the form of threats, assaults, or property damage.

1. Domestic Violence

"Domestic Violence" includes physical acts of violence committed by a current or former spouse or intimate partner of a 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 or the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred, 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 of violence occurred.¹

¹ Domestic violence and dating violence are included within the crime of domestic assault under Tennessee law. Specific information about the criminal offense can be found at Tenn. Code Ann. §39-13-111.

2. Dating Violence

“Dating Violence” means violence committed by a person: (A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (B) where the existence of such a relationship shall be determined based on a consideration of the following factors:

- length of the relationship;
- the type of the relationship; and
- the frequency of interaction between the persons involved in the relationship.

3. Stalking

“Stalking” means engaging in a course of conduct directed at a specific person that would cause a reasonable person to (A) fear for his or her safety or the safety of others; or (B) suffer substantial emotional distress.² Stalking includes cyberstalking, which is a form of stalking occurring in electronic media such as the Internet, social networks, blogs, cell phones, texts, or emails that are used to pursue, harass, or to make unwelcome contact with another person in an unsolicited fashion. Examples of stalking include: unwelcome and repeated visual or physical proximity to a person; repeated oral or written threats; unwelcomed/unsolicited written communications, including letters, cards, texts, emails, instant messages, or messages on social media or message bulletin boards.

V. **ROLES AND RESPONSIBILITIES**

A. **Title IX Coordinator**

The Title IX Coordinator will inform the Executive Vice President for Finance and Administration of all sexual misconduct incidents. The Title IX Coordinator is part of the Office of Human Resources and reports to the Director of Human Resources.

It is the responsibility of the Title IX Coordinator to: (1) receive all Title IX complaints at the University; (2) oversee the process of responding to Sexual Misconduct complaints; (3) coordinate dissemination of information and education and training programs; (4) identify and address any patterns or systemic problems that arise during the review of such complaints; (5) assist members of the University community in understanding that Sexual Misconduct is prohibited by this policy; (6) answer questions about this policy; (7) serve as and/or appoint investigators and ensure that investigators are trained to respond to and investigate complaints of Sexual Misconduct; (8) ensure that employees and students are aware of the procedures for reporting and addressing complaints of Sexual Misconduct; (9) implement the Complaint Resolution Procedures or to designate appropriate persons for implementing the Complaint Resolution Procedures; (10) monitor full compliance with the requirements and timelines specified in the Complaint Resolution Procedures; and (11) compile an annual report on incidents of Sexual Misconduct.

The Title IX Coordinator may consult with other University officials and legal counsel as necessary when carrying out his or her duties under this policy.

² Tennessee’s definition of stalking can be found at Tenn. Code Ann. §39-17-315.

B. Administrators, Deans, and Other Managers

It is the responsibility of administrators, deans, and other managers (i.e., those that formally supervise other employees) to:

- Inform employees under their direction or supervision of this policy
- Work with the Title IX Coordinator to implement education and training programs for employees and students
- Implement any corrective actions that are imposed as a result of findings of a violation of this policy

C. All Employees

It is the responsibility of all employees to review this policy and comply with it.

D. Students

It is the responsibility of all students to review this policy and comply with it.

E. The University

When the University is aware that a member of the University Community may have been subjected to or affected by conduct that constitutes Sex Discrimination, the University will take prompt action and review the matter. If necessary, an investigation and appropriate steps to stop and remedy the prohibited conduct will occur. The University will act in accordance with its Complaint Resolution Procedures, described below.

VI. COMPLAINTS

A. Making a Complaint

1. Employees

All members of the University community have a duty to report Sexual Misconduct to the Title IX Coordinator when they receive a report of such conduct or witness such conduct. The report must include all known relevant details of the alleged Sexual Misconduct. If an employee receives a report from an individual who asks to maintain confidentiality, the employee should tell the person that the University will consider the request, but cannot guarantee that the University will be able to honor it. In reporting the details of the incident to the Title IX Coordinator, the employee will also inform the Coordinator of the request for confidentiality.

This reporting obligation includes employees who may have a professional license requiring confidentiality if they are not employed by the University in that professional role. This reporting obligation includes student employees only to the extent the student employee has a supervisory position. An employee not reporting Sexual Misconduct as required by this policy may be disciplined accordingly, up to and including termination. This section does not apply to the employees who may maintain confidentiality as described in Section VI.A.4. of this policy.

University faculty and employees are also encouraged to file a complaint of Sexual Misconduct when they are the victim of such conduct.

2. Students and Non-Employee Members of the University Community

Students and non-employees who believe they or another member of the University Community may have been subjected to conduct that constitutes prohibited Sexual Misconduct are encouraged to file a complaint with the Title IX Coordinator. Students and other persons may also file a complaint with the United States Department of Education's Office for Civil Rights, as set forth in Section III above.

Students should be aware that all employees at the University, except those designated in Section VI.A.4., have an obligation to report Sexual Misconduct that they become aware of or witness to the Title IX Coordinator for review and investigation, and they may not keep such information confidential.

3. Third-Party Reporting

Any individual may make a report of an act of sexual violence. The report may be made without disclosing the identities of the parties involved. However, the University's ability to respond to the third party report of sexual violence may be limited by the amount of information provided.

4. Confidential Resources

The University encourages victims to report Sexual Misconduct immediately. However, the University realizes that victims may desire to maintain confidentiality. A victims who wishes to talk confidentially about his or her situation may contact the following confidential resources on campus:

- Professional Licensed Counselors: Professional licensed counselors who provide mental-health counseling to members of the University community. Counseling Services can be reached at 615-248-1346. The offices are located in the Center for Leadership, Calling and Service in the Bud Robinson Building .
- The University Chaplain(s): The University chaplain(s) can be reached at 615-248-1378. The offices are located on the third floor of the McClurkan Building.
- Resident Health Care Provider: The resident health care provider in the clinic can be reached at 615-248-1261. The clinic is located on the back side of Georgia Hall.

These confidential resources will not report your circumstances to the University for investigation without your permission, unless otherwise required by law (such as when the victim is a minor). Notwithstanding, a non-identifying report may be made to the Title IX Coordinator so that the University can identify any patterns of Sexual Misconduct on campus.

Victims of sexual offenses may also seek help from off-campus organizations that have trained professionals able to provide assistance to victims of sexual violence. These organizations are not

associated with the University and therefore disclosure will not trigger a University investigation into the incident. Victims may contact the following organizations for assistance:

- Rape and Sexual Abuse Center, 615-259-9055 (Counseling, referrals, support groups)
- Domestic Violence Intervention Center, 615-255-0711 (Counseling, advocacy, referrals, group counselors for domestic violence)
- You Have the Power, 615-292-7027 (referrals, resource information)

5. Content of the Complaint

So that the University has sufficient information to investigate a complaint, the complaint should include: (1) the date(s) and time(s) of the alleged Sexual Misconduct; (2) the names of all person(s) involved in the alleged Sexual Misconduct, including possible witnesses; (3) all details outlining what happened; and (4) contact information for the complainant so that the University may follow up appropriately.

6. Information Provided to Complainant and Respondent

A complainant who makes a claim of Sexual Misconduct to the University will be given information about this policy and the Complaint Resolution Procedures used to investigate and resolve complaints of Sexual Misconduct, options for filing complaints with the local police, and resources that are available on campus and in the community. A person against whom a complaint has been filed will also be given information about the policy, Complaint Resolution Procedures, and available resources.

7. Conduct that Constitutes a Crime

In addition to making a report under this policy, the University encourages any person who believes he or she is the victim of a crime—including Sexual Violence, Domestic Violence, Dating Violence, or Stalking—to make a report to local law enforcement. If requested, the University will assist the complainant in notifying the appropriate law enforcement authorities. A victim may decline to notify such authorities.

Unless there is a health or safety emergency, articulable threat to members of the University Community, or a state law requiring reporting (such as in the case of child abuse) the University will not contact law enforcement without the alleged victim's permission.

8. Emergency Reporting Options

Individual safety is paramount. Victims of sexual violence who are in an emergency situation or are uncertain about what they should do are encouraged to call 911 to request assistance from emergency personnel including law enforcement and emergency medical personnel. Local law enforcement and emergency medical personnel are trained to help victims of sexual violence and can recommend the best options to ensure preservation of evidence, ensure the victim's safety, and begin a criminal investigation into the incident.

9. Special Advice for Individuals Making Complaints of Sexual Violence, Domestic Violence, Dating Violence, or Stalking

If you are the victim of Sexual Violence, Domestic Violence, or Dating Violence, do everything possible to preserve evidence by making certain that the crime scene is not disturbed. Preservation of evidence may be necessary for proof of the crime or in obtaining a protection order. For those who believe that they are victims of Sexual Violence, Domestic Violence, or Dating Violence, the University recommends the following:

- Get to a safe place as soon as possible.
- Try to preserve all physical evidence of the crime—avoid bathing, using the toilet, rinsing one's mouth or changing clothes. If it is necessary, put all clothing that was worn at the time of the incident in a paper bag, not a plastic one.
- Contact law enforcement by calling 911.
- Get medical attention - all medical injuries are not immediately apparent. This is also necessary to collect evidence in case the individual decides to press charges. Local hospitals have evidence collection kits necessary for criminal prosecution should the victim wish to pursue charges. Take a full change of clothing, including shoes, for use after a medical examination.
- Contact a trusted person, such as a friend or family member for support.
- Talk with a professional licensed counselor, University chaplain, or resident health care provider who can help explain options, give information, and provide emotional support.
- Make a report to the Title IX Coordinator.
- Explore this policy and avenues for resolution under the Complaint Resolution Procedures.

It is also important to take steps to preserve evidence in cases of Stalking, to the extent such evidence exists. In case of Stalking, evidence is more likely to be in the form of letters, emails, text messages, etc. rather than evidence of physical contact and violence. This type of non-physical evidence will also be useful in all types of Sexual Misconduct investigations.

Once a complaint of Sexual Violence, Domestic Violence, Dating Violence, or Stalking is made, the complainant has several options such as, but not limited to:

- contacting parents or a relative
- seeking legal advice
- seeking personal counseling (always recommended)

- pursuing legal action against the perpetrator
- pursuing disciplinary action
- requesting that no further action be taken

10. Amnesty for Alcohol or Drug Use

The University seeks to remove any barriers to reporting Sexual Misconduct. The University will offer any student who reports Sexual Misconduct limited immunity from being charged for policy violations out of fear that they themselves or others may be accused of violating other University policies, such as drinking or drugs at the time of the incident. The University may recommend education, therapeutic remedies or accountability options for those individuals, but no conduct proceedings or conduct record (for students) or disciplinary actions (for employees) will result.

11. Vendors, Contractors, and Third-Parties

This policy applies to the conduct of vendors, contractors, and third parties. Persons who believe they have been discriminated against or harassed in violation of this policy should make a complaint in the manner set forth in this section. Third parties who violate this policy may be subject to sanctions by the University, including, but not limited to, loss of campus privileges, loss of future contracts, employment and enrollment.

12. Retaliation

It is a violation of this policy to retaliate against any member of the University community who reports or assists in making a complaint of Sexual Misconduct or who participates in the investigation of a complaint in any way. Persons who believe they have experienced Retaliation in violation of this policy should make a complaint in the manner set forth in this section.

Retaliation consists of materially adverse action taken against a person because the person made a good faith report of Sexual Misconduct or participated in the investigation of a report of Sexual Misconduct, such as by serving as a witness or support person. A finding of retaliation or a threat of retaliation shall constitute a separate violation of this policy, subject to separate or consolidated disciplinary procedures, and is not dependent upon a finding of a violation of any other section of the policy.

Specific examples of Retaliation include:

- Terminating a person's employment, demoting them, denying them a promotion, reducing their pay, or "writing them up" because they made a report of Sexual Misconduct.
- Sending threatening text messages or social media messages to someone because they made a report of Sexual Misconduct or gave a statement as a witness.
- Causing physical damage to a person's personal belongings because they made a report of Sexual Misconduct or gave a statement as a witness.
- Suspending a person from an activity or limiting their involvement because they made a report of Sexual Misconduct.

- Publishing knowingly false information about a person because they made a report of Sexual Misconduct.

13. Good Faith Reports

The University encourages the good faith reporting of Sexual Misconduct. However, the University will not allow this policy or the Complaint Resolution Procedures to be abused for improper means. Therefore, if the University's investigation reveals that a complaint was knowingly false, the complaint will be dismissed and the person who filed the knowingly false complaint may be subject to discipline, up to and including termination and/or expulsion. Such disciplinary action will not constitute prohibited retaliation. A person makes a bad faith report of Sexual Misconduct if, at the time they make the report, they know the report is false or frivolous. Further, the University may take disciplinary action against any person who knowingly provides false information during the investigation and resolution of a complaint of Sexual Misconduct and such disciplinary action will not constitute prohibited retaliation.

14. Interim Measures

The University will provide the complainant and the respondent with reasonable interim support and protective measures to prevent and mitigate further acts of misconduct upon learning of the alleged sexual misconduct. Such measures may be available regardless of whether the complainant chooses to report the crime to campus police or local law enforcement. Requests of this nature should be made to the Title IX Coordinator who, in consultation with other University officials if necessary, will determine whether such accommodations will be implemented. The University reserves the right to suspend any member of the University community suspected or accused of violating this policy, or to take any other interim measures the University deems appropriate, pending the outcome of an investigation or grievance.

Interim measures are individualized, based on the information gathered by the Title IX Coordinator, and designed to avoid depriving a student of his or her education whenever possible. The University will determine the reasonableness, necessity, and scope of any interim measures, which may include:

- No Contact Order: A complainant or respondent may request, or the University may impose, communication and contact restrictions to prevent further potentially harmful interaction. These communication and contact restrictions generally preclude in person, telephone, electronic or third party communications.
- Academic, Employment or Residence Modifications: A complainant or respondent may request an academic or employment accommodation or a change in residence after a report of sexual misconduct. An individual who requests assistance in changing their academic or living situation after an incident of sexual misconduct will receive appropriate and reasonably available accommodations. These may include:
 - Change of residence hall room
 - Change in work assignment or schedule
 - Providing an escort to ensure safe movement between classes and activities;

- Academic accommodations, including a change in class schedule, taking an incomplete, dropping a course without penalty, providing an academic tutor, extending deadlines for assignments, rescheduling exams and assignments, providing alternative course completion options, or allowing a voluntary leave of absence
- Providing medical services available through the University clinic
- Emotional Support: Counseling and emotional support is available to any student through the Office of Counseling Services free of charge. The University will also assist in providing a referral to off campus agencies. Additionally, the university chaplain is available to provide emotional support as needed.
- Interim Separation: Where the report of sexual misconduct poses an ongoing risk of harm to the safety or well-being of an individual or members of the campus community, the University may place an individual or organization on interim suspension or impose leave for an employee. Pending resolution of the complaint, the individual or organization may be denied access to campus. When interim suspension or leave is imposed, the University will make reasonable efforts to complete the investigation and resolution within an expedited time frame.

In the event such an accommodation is provided, the University will maintain it as confidential to the extent that maintaining such confidentiality would not impair the University's ability to provide it. The Title IX Coordinator will communicate with each party throughout the investigation to ensure interim measures remain necessary and effective. Failure to comply with the terms of any interim measures or protections that have been implemented may constitute a separate violation of this policy.

If a complainant has obtained a temporary restraining order or other no contact order against the alleged perpetrator from a criminal, civil, or tribal court, the complainant should provide such information to the Title IX Coordinator. The University will take all reasonable and legal action to implement the order.³

B. Timing of Complaints

The University encourages persons to make complaints of Sexual Misconduct as soon as possible because late reporting may limit the University's ability to investigate and respond to the conduct complained of.

C. Investigation and Confidentiality

All complaints of Sexual Misconduct will be promptly and thoroughly investigated in accordance with the Complaint Resolution Procedures, and the University will take disciplinary and remedial action where appropriate. The University is committed to protecting the privacy of all individuals involved in a report of Sexual Misconduct. Every effort will be made to protect the privacy interests

³ Information about obtaining protection orders in Tennessee can be found at: <https://www.tncourts.gov/programs/self-help-center/forms/order-protection-forms>.

of all individuals involved in a manner consistent with the need for a thorough review of the allegations. The privacy of the parties will be respected and safeguarded at all times. For purposes of this policy, privacy and confidentiality have distinct meanings:

- Privacy means that information related to a report of sexual misconduct will only be shared with a limited number of individuals who are University employees who need to know in order to assist in the active review, investigation, or resolution of the report.
- Confidentiality means that personally identifying information, such as names or information that directly or indirectly identifies the individuals involved in the incident cannot be revealed to another individual without express permission of the individual, unless there are circumstances posing an imminent risk of harm to self or others.
- Complete confidentiality is only available when information is disclosed to professionals who are mandated by law to protect the confidential disclosures. On campus, these individuals include: professional counselors in counseling services, resident health care provider in the clinic, or the University chaplain(s).

The University will make reasonable and appropriate efforts to preserve an individual's privacy and protect the confidentiality of information when investigating and resolving a complaint. However, because of laws relating to reporting and other state and federal laws, the University cannot guarantee confidentiality to those who make complaints. In the event that the complainant's confidentiality cannot be ensured, the University will notify the complainant.

In the event a complainant requests confidentiality or asks that a complaint not be investigated, the University will take all reasonable steps to investigate and respond to the complaint consistent with the request for confidentiality or request not to pursue an investigation. If a complainant insists that his or her name not be disclosed to the alleged perpetrator, the University's ability to respond may be limited. The University reserves the right to initiate and proceed with an investigation despite a complainant's request for confidentiality in limited circumstances involving serious or repeated conduct or where the alleged perpetrator may pose a continuing threat to the University Community. If the University is unable to honor the victim's request for confidentiality, the University will notify the victim before the victim's identity is disclosed to the accused.

The Title IX Coordinator is the person responsible for evaluating requests for confidentiality, and he or she may consult with other University officials as necessary when making this determination. The Title IX Coordinator must balance the victim's desire for confidentiality against the overall campus safety. Factors to consider include: (a) was a weapon involved in the incident; (b) is the accused a repeat offender; (c) does the incident create a risk of occurring again; (d) are there other sources of evidence that could be used to identify the accused (i.e., surveillance cameras); and (e) will the University be able to eliminate the hostile environment without disclosing the identity of the victim.

Note that certain types of Sexual Misconduct are considered crimes for which the University must disclose crime statistics in its Annual Security Report that is provided to the campus community and available to the public. These disclosures will be made without including personally identifying information.

D. Resolution

If a complaint of Sexual Misconduct is found to be substantiated, the University will take appropriate corrective, disciplinary, and remedial action to stop the inappropriate conduct, address its effects, and prevent its recurrence. Students, faculty, and employees found to be in violation of this policy will be subject to discipline up to and including written reprimand, suspension, probation, demotion, termination, or expulsion. Affiliates and program participants may be removed from University programs and/or prevented from returning to campus.

Remedial steps may also include individual counseling, as well as academic, work, or transportation accommodations for the complainant, separation of the parties, and training for the respondent and other persons.

VII. RESOURCES

Any individual affected by Sexual Misconduct will have equal access to support and counseling services offered through the University. The University encourages any individual who has questions or concerns to seek the support of the University's resources. These campus resources are available to provide information about University's policy and procedure and to provide assistance to any party in the event a formal complaint is made.

- A. **Emergency Support Services:** The University encourages all victims of sexual violence to immediately seek emergency medical care and/or law enforcement. This is the best option to provide physical safety, emotional support, and medical care to the victim. It is also the best option to ensure the preservation of evidence. Contact information for emergency medical care and law enforcement are listed below:
 - Metro Police Department, 615-862-8600
 - Domestic Violence Unit, Metro Nashville-Davidson County, 615-880-3000 (assistance with obtaining orders of protection, short-term counseling)
 - 911

- B. **Campus Resources:** The University's Title IX Coordinator, Associate Dean of Students for Residential Life, Director of SGCS Student Success and Advising, and Director of Human Resources can provide victims with timely information on available on-campus and off-campus resources, reporting options, and will provide guidance regarding the various reporting options, including filing a criminal complaint against the accused perpetrator.

- C. **Counseling and Confidential Resources:** The University offers counseling to individuals who have been a victim of sexual violence, regardless of whether the victim chooses to file a formal complaint. There are also several organizations and facilities that provide confidential support off-campus. The trained professionals and staff employed by these on and off-campus facilities are able to provide counseling, information, and support under legally protected confidentiality. Personal information disclosed to the professionals and staff

employed by these organizations and facilities will not be shared with any member of the University staff or administration without the express consent of the victim.

VIII. ACADEMIC FREEDOM

While the University is committed to the principles of free inquiry and free expression, conduct constituting Sexual Misconduct is neither legally protected expression nor the proper exercise of academic freedom.

IX. EDUCATION

The University is committed to the prevention of sexual violence through education and awareness programs. Throughout the year, programs designed to promote awareness are presented by a variety of campus resources. Prevention programs include the annual overview of the University's Sexual Misconduct policies during new student and new employee orientations. This program includes discussion on prohibited conduct, effective consent, bystander intervention, and the impact of alcohol and illegal drugs on sexual misconduct. The Title IX Coordinator is responsible for providing ongoing training to existing students and employees on campus.

X. REVIEW

This policy is maintained by the University's Title IX Coordinator. The Title IX Coordinator will review this policy regularly, with the assistance of the University's Title IX Committee. The review will capture evolving legal requirements, evaluate the supports and resources available to the parties, and assess the effectiveness of the Complaint Resolution Procedures. The review will incorporate an aggregate view of reports, resolution, and climate.

XI. DISTRIBUTION

This policy will be disseminated widely to the University Community through email communication, the University's website, inclusion in orientation programs for new employees and new students, and through other appropriate channels of communication.

COMPLAINT RESOLUTION PROCEDURES

I. GENERAL PRINCIPLES

A. Applicability

These Complaint Resolution Procedures apply to the resolution of all reports under the Sexual Misconduct Policy. They apply to the resolution of complaints against students, faculty, administrators, staff, and third parties, and they are the exclusive means of resolving complaints of Sexual Misconduct. Under the Complaint Resolution Procedures, the party making a complaint is referred to as the “complainant” and the person accused of misconduct is referred to as the “respondent.”

B. Administration

The Title IX Coordinator shall have responsibility to oversee and administer these complaint resolution procedures. The Title IX Coordinator may consult with other University administrators and counsel as needed. For purposes of these complaint resolution procedures, “Investigating Officer” means the Title IX Coordinator and/or his/her designee. The Investigating Officer may be a third-party investigator or attorney retained for that purpose by the University.

In cases where the complainant and the respondent are both students, the Associate Dean of Residential Life or the Director of SGCS Student Success and Advising, dependent upon undergraduate or graduate student status, will be designated as co-investigators for the investigation process. In cases involving employees, the Director of Human Resources will be designated to assume primary responsibility for the investigation process. In all other cases, the Title IX Coordinator shall assume primary responsibility for the investigation process.

C. Promptness, Fairness and Impartiality

These procedures provide for prompt, fair, and impartial investigations and resolutions. The Investigating Officer shall discharge his or her obligations under these complaint resolution procedures fairly and impartially. If the Investigating Officer determines that he or she cannot apply these procedures fairly and impartially because of the identity of a complainant, respondent, or witness, or due to any other conflict of interest, the Title IX Coordinator shall designate another appropriate individual to administer these procedures.

D. Training

These procedures will be implemented by officials who receive annual training on the issues related to Sex Discrimination, Sexual Harassment, Sexual Violence, Domestic Violence, Dating Violence, and Stalking and on how to conduct an investigation process that protects the safety of victims and promotes accountability.

E. Participation in Investigations

All members of the University Community are encouraged and expected to fully cooperate with any investigation and resolution under these Complaint Resolution Procedures. University faculty and employees who fail to cooperate and/or participate will face discipline, up to and including termination. In the event an alleged victim refuses to participate under these Complaint Resolution Procedures, the University may proceed as a complainant under the circumstances specified in Section VI.C of the Sexual Misconduct Policy. In the event a respondent refuses to participate, the Complaint Resolution Procedures will be completed despite the respondent's lack of participation and may result in a finding of misconduct *in absentia*.

II. INVESTIGATION AND RESOLUTION OF THE COMPLAINT

A. Commencement of the Investigation

Once a complaint is made, the Investigating Officer will commence an investigation of it as soon as practicable. The purpose of the investigation is to determine whether it is more likely than not that the alleged behavior occurred and, if so, whether it constitutes Sexual Misconduct. During the course of the investigation, the Investigating Officer may receive counsel from University administrators, the University's attorneys, or other parties as needed.

In certain narrow circumstances, the Investigating Officer may commence an investigation even if the complainant requests that the matter not be pursued. In such a circumstance, the Investigating Officer will take all reasonable steps to investigate and respond to the matter in a manner that is informed by the complainant's articulated concerns.

B. Notification of the Respondent and Selection of Resolution Process

Once a complaint is received by the Investigating Officer, the Investigating Officer will promptly notify the respondent and provide the respondent with the opportunity to review a copy of the written complaint. This notice will include the identities of the parties involved, the specific section of the Sexual Misconduct Policy allegedly violated, the precise conduct allegedly constituting the potential violation, and the date and location of the alleged incident. The respondent will also be notified of the individual(s) who will conduct the investigation.

The Investigating Officer will then communicate with each party, separately, to discuss the pertinent avenues for resolution as set forth below. Considering the parties' wishes and other circumstances, the Investigating Officer will then determine whether the complaint will be resolved through

informal or formal process. The Investigating Officer will then notify the parties of the process to be used.

C. Content of the Investigation

During the investigation, the complainant will have the opportunity to describe his or her allegations and present supporting witnesses or other evidence. The respondent will have the opportunity to respond to the allegations and present supporting witnesses or other evidence. Both parties will be asked to provide the Investigating Officer with relevant documents and other evidence and to describe the effect of the alleged incident on their opportunity to benefit from the University's programs or activities.

Formal rules of evidence do not apply in any of the formal resolution processes specified below. Nonetheless, evidence that is irrelevant or whose prejudicial effect substantially outweighs its probative value may be excluded from consideration. A complainant's irrelevant sexual history will be excluded from consideration.

The Investigating Officer will review the statements and evidence presented and may, depending on the circumstances, interview others with relevant knowledge, review documentary materials, and take any other appropriate action to gather and consider information relevant to the complaint. Throughout the investigation, parties will be granted an opportunity to review and comment, in writing, any statements or evidence provided by the other party or any information independently developed by the Investigating Officer.

All parties and witnesses involved in the investigation are expected to cooperate and provide complete and truthful information.

D. Support Person

At each stage of the Complaint Resolution Procedures (interviews, meetings, etc.), the complainant and respondent may be accompanied by a support person of their choice. In cases involving multiple complainants or respondents, the support person/advisor cannot be another complainant or respondent. The support person/advisor may provide support and private counsel to the party. However, the support person does not serve as an advocate on behalf of the complainant or respondent, may not be actively involved in any proceedings, and must agree to maintain the confidentiality of the process.

The University reserves the right to remove or dismiss a support/person advisor who fails to follow this policy and applicable provisions of the Complaint Resolution Procedures, in which case the party will be allowed to select a different support person.

E. Interim Measures

At any time during the investigation, both the complainant and the respondent may request interim measures. Such requests should be directed to the Title IX Coordinator who will decide interim remedies or protections for the parties involved or witnesses are appropriate. These interim remedies may include changes to housing assignments, separating the parties, placing limitations on contact

between the parties, suspension, or making alternative class-placement or workplace arrangements. Failure to comply with the terms of these interim remedies or protections may constitute a separate violation of this Policy.

F. Criminal Investigation and Violations

Some instances of Sexual Misconduct may also constitute criminal conduct. In such instances, the complainant is also encouraged to file a report with the appropriate law enforcement authorities and, if requested, the University will assist the complainant in doing so. The pendency of a criminal investigation, however, does not relieve the University of its responsibilities under Title IX. Therefore, to the extent doing so does not interfere with any criminal investigation, the University will proceed with its own investigation and resolution of the complaint.

Individuals who have been charged or convicted of any sex-based crimes, occurring on or off campus, may be subject to additional University disciplinary action.

G. Resolution

At the conclusion of the investigation, the Investigating Officer will prepare a preliminary written report. The preliminary report will explain the scope of the investigation, summarize the relevant exculpatory and inculpatory evidence, and determine whether any allegations in the complaint were found to be substantiated by a preponderance of the evidence. The report will include copies of all relevant evidence received and considered during the investigation. Both parties will be provided an opportunity to review the preliminary report and respond to it in writing within three (3) business days. Thereafter, the Investigating Officer will finalize the preliminary report. The final report will include a determination as to whether a violation of the Sexual Misconduct Policy has occurred and, if so, any steps that will be taken to maintain an environment free from Sexual Misconduct and to protect the safety and well-being of the complainant and other members of the University Community. This shall include reasonable steps to remedy the effects of such conduct on the complainant and others and to prevent the recurrence of Sexual Misconduct and retaliation. Examples of such action include: no-contact orders; classroom or work reassignment; the provision of counseling or other support services; and training.

The complainant and the respondent will be provided with written notice of the final investigation outcome, including the rationale for the Investigating Officer's decision, and an opportunity to review the final report within three (3) business days of its completion. Such notice will be provided to the parties concurrently. The Investigating Officer's decision shall be final.

If the Investigating Officer determines that a student violated this policy, the matter will be referred to the Associate Vice President and Dean of Students ("Associate VP") or Dean of the School of Graduate and Continuing Studies ("Dean"), dependent upon undergraduate or graduate status, to determine an appropriate sanction. The Associate VP or Dean will review the final investigation report, invite the parties to meet with them separately, and render a written decision with its rationale for the sanction. The Title IX Coordinator will provide the parties with a copy of the Associate VP's or Dean's written decision concurrently. The complainant will also be informed of any available individual remedies.

If the Investigating Officer determines that an employee violated this policy, the University Provost will determine the appropriate sanction.

If the Title IX Coordinator determines that no violation of policy has occurred, no further action will be taken and nothing will be placed in the respondent's file.

H. Sanctions

The University will impose a sanction commensurate with the severity or pervasiveness of the offense and the threat it poses to the community. Individuals who are found responsible under this policy may face disciplinary sanctions, up to and including expulsion and/or termination of employment.

Possible disciplinary sanctions for students are set forth in the Student Handbook and include fines, written reprimand, restitution/reconciliation, restrictions and/or sanctions, educational assignment, accountability, social probation, suspension, dismissal, and expulsion. Possible disciplinary sanctions for employees could include educational assignments, written warning, letter to file, suspension, and termination of employment.

I. Special Procedure Concerning Complaints Against the Senior Officials

If a complaint involves alleged conduct on the part of the University's Title IX Coordinator, President, or any President's Cabinet level administrator, the University Board of Trustees ("Board") will designate the Investigating Officer. Based on the information gathered by the investigation, the Board will prepare and issue the written statement determining the complaint. The determination of the Board is final and not subject to appeal.

J. Informal Resolution

Informal means of resolution, such as mediation, may be used in lieu of the formal investigation and determination procedure. The following standards apply to any informal resolution method that is utilized:

- The informal process can only be used with both parties' voluntary cooperation after receiving a full disclosure of the allegations and their options for formal resolution, and with appropriate involvement by the institution (e.g., the Title IX Coordinator);
- The complainant will not be required to "work out" the problem directly with the respondent;
- Either party may terminate the informal process at any time and elevate the complaint to the formal investigation procedures; and
- With the agreement of the parties involved and the University, a complaint may be informally resolved at any stage of these procedures.

If informal resolution is reached, it will be documented in writing and signed by both parties. Because informal resolution is a voluntary and mutually agreeable process, a resolution reached via informal means cannot be appealed.

K. Timing of the Investigation

The University will endeavor to conduct a prompt investigation and resolution of the complaint within sixty (60) calendar days of receiving it, though timing is often based on many things, such as the facts of a case, the availability of the parties and witnesses, scheduling conflicts, etc. The Investigating Officer may require the production of information by the parties by a certain date in order to facilitate a timely resolution. Both the complainant and the respondent will be given periodic updates regarding the status of the investigation, including any delays.

Some instances of Sexual Misconduct may also constitute criminal conduct. In the case where alleged criminal conduct has also been reported to law enforcement, the University may temporarily delay its investigation of the complaint where necessary to avoid interfering with law enforcement. However, the pendency of a criminal investigation does not serve as a substitute for these procedures and the investigation and resolution process will commence promptly once interference is no longer a concern. In addition, because the standard of proof that applies in these procedures (i.e., preponderance of the evidence) is different than the standard necessary for a criminal conviction (i.e., proof beyond a reasonable doubt), the University's determination will not be held in abeyance due to the pendency of a criminal trial.

III. RIGHTS OF THE PARTIES

During the investigation and resolution of a complaint, the complainant and respondent shall have equal rights. They include:

- Receiving copies of all relevant policies which apply to the allegation(s)
- Written explanation of rights and options
- Information about how the University will protect the confidentiality of the parties, including how publicly-available recordkeeping will be accomplished without the inclusion of identifying information about the parties, to the extent permissible by law;
- Written notification of existing counseling, health, mental health, victim advocacy, legal assistance, chaplain and pastoral care support, and other services available on campus and in the community;
- Equal opportunity to identify and have considered witnesses and other relevant evidence
- The opportunity to speak on their own behalf;
- Written notice in advance of any interview with sufficient time to prepare for meaningful participation
- Similar and timely access to all information considered by the Investigating Officer
- Equal opportunity to review any statements or evidence provided by the other party
- Equal access to review and comment upon any information independently developed by the Investigating Officer

IV. DOCUMENTATION

Throughout all stages of the investigation and resolution, the Title IX Coordinator is responsible for maintaining documentation regarding the investigation including documentation of all proceedings conducted under these complaint resolution procedures.

The complaint file (including the investigator's notes, communications from the parties, preliminary and final reports, determination letters, evidence collected during the investigation, and documentation of remedial measures) shall be retained for a minimum of three years and shall be stored in a manner reasonably designed to maintain its confidentiality. However, nothing in this policy shall limit the University's right to use the complaint file, or portions thereof, in connection with the University's business, the investigation or resolution of other complaints, in the course of litigation, or in connection with any investigation by any government agency.

V. INTERSECTION WITH OTHER PROCEDURES

These complaint resolution procedures are the exclusive means of resolving complaints alleging violations of the Sexual Misconduct Policy. To the extent there are any inconsistencies between these complaint resolution procedures and other University grievance, complaint, or discipline procedures, these complaint resolution procedures will control the resolution of complaints alleging violations of the Sexual Misconduct Policy.

Nothing in these Complaint Procedures, Sexual Misconduct Policy, or associated materials should be interpreted so as to limit the University's right to resolve, investigate, and/or take disciplinary action against any improper conduct of a sexual nature even though such conduct is not of the type, severity or pervasiveness that constitutes Sexual Misconduct as defined in the Sexual Misconduct Policy.