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File Date: 8/28/2020

# Notice of Rulemaking Hearing

Hearings will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, T.C.A. § 4-5-204. For questions and copies of the notice, contact the person listed below.

<b>Agency/Board/Commission:</b>	University of Tennessee (Health Science Center)
<b>Division:</b>	
<b>Contact Person:</b>	C. Ryan Stinnett, General Counsel
<b>Address:</b>	719 Andy Holt Tower, Knoxville, TN 37996
<b>Phone:</b>	865-974-2540
<b>Email:</b>	ryanstinnett@tennessee.edu

Any Individuals with disabilities who wish to participate in these proceedings (to review these filings) and may require aid to facilitate such participation should contact the following at least 10 days prior to the hearing:

<b>ADA Contact:</b>	Melissa Tindell
<b>Address:</b>	P267 Andy Holt Tower, 1331 Circle Park, Knoxville, TN 37996
<b>Phone:</b>	865-974-0741
<b>Email:</b>	mtindell@tennessee.edu

**Hearing Location(s)** (for additional locations, copy and paste table)

Address 1:	University of Tennessee		
Address 2:	Ballrooms in the Student Union (Room 272 A-C)		
City:	Knoxville		
Zip:	37996		
Hearing Date:	10/23/2020		
Hearing Time:	8:30 a.m.	<input type="checkbox"/> CST/CDT	<input checked="" type="checkbox"/> EST/EDT

**Additional Hearing Information:**

Oral and written comments on the proposed rulemaking will be received at the public hearing on Friday, October 23, 2020 at 8:30 a.m. EDT. In addition, interested parties may submit written comments on or before October 23, 2020, by mail or email to the following person:

C. Ryan Stinnett, General Counsel  
University of Tennessee  
719 Andy Holt Tower  
Knoxville, TN 37996  
865-974-2540  
ryanstinnett@tennessee.edu

**Revision Type (check all that apply):**

- Amendment  
 New  
 Repeal

**Rule(s)** (ALL chapters and rules contained in filing must be listed. If needed, copy and paste additional tables to accommodate more than one chapter. Please enter only **ONE** Rule Number/Rule Title per row.)

<b>Chapter Number</b>	<b>Chapter Title</b>
1720-03-03	Student Rights and Responsibilities
<b>Rule Number</b>	<b>Rule Title</b>
1720-03-03-.02	Definitions
1720-03-03-.04	Standards of Conduct
1720-03-03-.07	Interim Suspension
1720-03-03-.08	Hearing Procedures

Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to <https://sos.tn.gov/products/division-publications/rulemaking-guidelines>.

## **AMENDED RULES**

### **1720.03-03.02 DEFINITIONS**

**AMEND** rule 1720-03-03-.02, so that at the expiration of Emergency Rule 1720-03-03-.02, the amended rule 1720-03-03-.02 shall read as follows:

**1720-03-03-.02 DEFINITIONS.** The following words, terms, or phrases, when used in this Chapter, shall have the following meanings:

- (1) **Business Day:** Any weekday not designated by the University as a holiday or administrative closure day. When calculating a time period of business days specified in this Chapter, the business day of the event that triggers a time period is excluded.
- (2) **Disciplinary Hold:** The University hold described in Section .05(3).
- (3) **Faculty Member:** A person hired by the University to conduct teaching, research, or supervised clinical placements.
- (4) **Formal Complaint:** A document filed by a Complainant (or signed by the Title IX Coordinator) alleging that a Respondent engaged in sexual harassment, sexual assault, dating violence, domestic violence, stalking, or sexual exploitation, and requesting that the University investigate the allegation. There are two (2) types of Formal Complaints: (a) Formal Complaints that include Title IX Allegations (as defined under Section .02(15)); and (b) Formal Complaints that do not include Title IX Allegations, but do otherwise include allegations of sexual harassment, sexual assault, dating violence, domestic violence, stalking, or sexual exploitation.
- (5) **Good Faith:** Having a belief in the truth of information that a reasonable person in the same position could have, based on the information known to the person communicating the information at the time the information was communicated by that person. Information is not communicated in good faith if it is communicated with knowing or reckless disregard for information that would negate the former information.
- (6) **Member of the University Community:** A person who is a student, University employee, University volunteer, invited visitor to University-controlled property, or participant in a University-affiliated activity.
- (7) **Notice:** Written notice transmitted by United States mail, courier service, or hand delivery to the address the University's Registrar has on file for the student; and/or by e-mail to a student's University-provided e-mail account. When a notice is transmitted by United States mail or courier service, the notice is effective on the date that it is mailed or delivered to the courier service. When a notice is transmitted by hand delivery, the notice is effective on the date that it is delivered to the person to whom the notice is addressed. When a notice is transmitted by e-mail, the notice is effective on the date that the e-mail is sent. A student's University-issued email address is the official method of communication used by the University.

- (8) Possession: Direct control of a substance or property, actual knowledge of a substance or property, and/or being in such close proximity to the substance or property that it is a reasonable presumption that one had knowledge of the substance or property.
- (9) Protected Activity: A person's good faith: (a) opposition to conduct prohibited under the Standards of Conduct; (b) report to the University about conduct prohibited under the Standards of Conduct to the University; (c) participation (or reasonable expectation of participation) in any manner in an investigation, meeting, hearing, or interim measure; or (d) exercise of rights or responsibilities under any provision of the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act.
- (10) Sexual Harassment. Conduct on the basis of sex that satisfies one (1) or more of the following: (a) an employee of the University conditioning the provision of an aid, benefit, or service of the University on an individual's participation in unwelcome sexual conduct; (b) unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the University's education program or activity; or (c) sexual assault, dating violence, domestic violence, or stalking.
- (11) Staff Member: A person employed by the University on a part- or full-time basis, primarily involved in planning, organizing, staffing, directing and/or controlling efforts to achieve the goals and objectives of the University.
- (12) Standards of Conduct: Chapter 1720-03-03-.04.
- (13) Student: For purposes of this Chapter:
  - (a) The term "student" means:
    - 1. A person enrolled or registered for study at the University, either full-time or part-time, pursuing undergraduate, graduate, or professional studies, as well as non-degree and non-credit programs and courses;
    - 2. A student organization;
    - 3. A person who has completed the immediately preceding academic term and is eligible for re-enrollment;
    - 4. A person who is not officially enrolled but who has a continuing relationship with the University (e.g., on educational leave or other approved leave status);
    - 5. A person who attended the University during a previous academic term and who engaged in misconduct during the time of enrollment; and/or
    - 6. A person who has been admitted to the University and later matriculates at the University, with respect to misconduct:
      - i. That occurs as part of the application process; or
      - ii. That occurs post-admission and pre-matriculation and falls within the jurisdiction of this rule (e.g., occurs on University-controlled property).
  - (b) Residents, including interns and fellows, employed in Graduate Medical Education and similar training programs, are not "students" for purposes of this Chapter.
- (14) Student Organization: An organization that is composed solely of University students that has submitted a pending application or has completed the process for registration according to University rules.
- (15) Title IX Allegations: Allegations within a Formal Complaint that a Respondent's conduct constitutes Sexual Harassment (as defined under Section .02(10)) in the University's education

program or activity and occurred within the United States as defined in 34 C.F.R. 106.30(a).

- (16) UAPA: The Uniform Administrative Procedures Act, Tennessee Code Annotated § 4-5-101 et seq.
- (17) University: The University of Tennessee Health Science Center, including without limitation its campuses, centers, institutes, and constituent parts.
- (18) University-Affiliated Activity: means an activity on or off University-controlled property that is initiated, aided, authorized, sponsored, or supervised by the University.
- (19) University-Controlled Property: All land, grounds, structures, or any other property owned, controlled, or operated by the University. For purposes of this rule, University-controlled property includes, without limitation, all streets, alleys, sidewalks, and public ways abutting such property. University-controlled property also includes computers and network systems owned, controlled, or operated by the University or funded by the University.
- (20) University Official: An employee of the University, including, without limitation, faculty members and staff members, or, for purposes of this Chapter, a University-recognized volunteer, when acting in the performance of their duties. Student employees may be considered University officials when acting in the performance of their University duties.
- (21) Weapon: Any device, instrument, or substance that is designed to, or reasonably could be expected to, inflict a wound, incapacitate, or cause serious bodily injury or death, including, without limitation, firearms (loaded and unloaded, real firearms and devices that would reasonably appear to a law enforcement officer to be real firearms), ammunition, electronic control devices (including but not limited to tasers and stun guns), devices designed to discharge an object (including but not limited to bb guns, air guns, pellet guns, potato guns, and slingshots, but not water guns), explosives, dangerous chemicals (including but not limited to mace, tear gas, and oleoresin capsicum), martial arts weapons, bows and arrows, artificial knuckles, nightsticks, blackjacks, dirks, daggers, swords, and knives with fixed blades longer than four (4) inches. The term "weapon" does not include pocket knives that fold (but not excluding switchblades); chemical repellents available over-the-counter for self- defense; instruments used solely for personal hygiene, preparation of food, maintenance, University-related instruction, or University employment-related duties.
- (22) Written: To communicate words either on paper and/or electronically. For example, a notice delivered via e-mail constitutes a written notice under this rule.

**Authority:** T.C.A. § 49-9-209(e).

#### **1720.03-03.04 STANDARDS OF CONDUCT**

**AMEND** rule 1720-03-03-.04, so that at the expiration of Emergency Rule 1720-03-03-.04, the amended rule 1720-03-03-.04 shall read as follows:

**1720-03-03-.04 STANDARDS OF CONDUCT.** Students are prohibited from engaging in the following types of misconduct:

- (1) Academic Dishonesty. Cheating, plagiarism, or any other act of academic dishonesty, including, without limitation, an act in violation of the Honor Code.
- (2) False Information. Providing false information to a University official.
- (3) Misuse of Information in Connection with University Investigation or Hearing. Falsifying, distorting, misrepresenting, or withholding information in connection with a University investigation or hearing.
- (4) Misconduct Relating to Records or Identification. Forging, altering, destroying, falsifying, or misusing records or identification, whether in print or electronic form.

- (5) Harm to Others. Causing physical harm to any person; endangering the health, safety, or welfare of any person; engaging in conduct that causes a reasonable person to fear harm to his/her health or safety; or making an oral or written statement that an objectively reasonable person hearing or reading the statement would interpret as a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals.
- (6) Harassment. Unwelcome conduct that is so severe, pervasive, and objectively offensive, that it substantially interferes with the ability of a person to work, learn, live, or participate in or benefit from the services, activities, or privileges provided by the University. In no event shall this rule be construed to discipline a student for speech protected by the First Amendment to the United States Constitution (e.g., mere insulting or offensive speech).
- (7) Sexual Harassment, Sexual Assault, Dating Violence, Domestic Violence, Stalking, and/or Retaliation. Violating the University's Policy on Sexual Harassment, Sexual Assault, Dating and Domestic Violence, and Stalking, which includes sexual exploitation and retaliation.
- (8) Invasion of Privacy. Invasion of another person's privacy when that person has a reasonable expectation of privacy, including, without limitation, using electronic or other means to make a video or photographic record of any person in a location in which the person has a reasonable expectation of privacy, without the person's knowledge or consent. This includes, but is not limited to, making a video or photographic record of a person in shower/locker rooms or restrooms. The storing, sharing, and/or distributing of such nonconsensual recordings by any means is also prohibited.
- (9) Private or Public Property. Any of the following conduct with respect to private or public property, including, without limitation, University-controlled property: theft; misappropriation; unauthorized possession, use, sale, duplication, or entry; vandalism; destruction; damage; or conduct that is reasonably likely to cause damage.
- (10) Hazing. Any intentional or reckless act, on or off University-controlled property, by one (1) student, acting alone or with others, which is directed against any other student, which endangers the mental or physical health, safety, or welfare of that student, or which induces or coerces a student to endanger his or her mental or physical health, safety, or welfare. "Hazing" does not include customary athletic events or similar contests or competitions and is limited to those actions taken and situations created in connection with initiation into or affiliation with any organization.
- (11) Disorderly Conduct. Fighting or other physically violent or physically threatening conduct; creating a hazardous or physically offensive condition by any act that serves no legitimate purpose; making noise that could unreasonably disturb others who are carrying on lawful activities; or conduct that breaches the peace.
- (12) Lewd, Indecent, or Obscene Conduct. Engaging in lewd, indecent, or obscene conduct, including, without limitation, public exposure of one's sexual organs, public urinating, and public sexual acts.
- (13) Imminent Lawless Action. Engaging in speech either orally or in writing that is directed to inciting or producing imminent lawless action and is likely to incite or produce such action.
- (14) Fire Safety. Any act of arson; falsely reporting a fire, the presence of an explosive or incendiary device, or other emergency; setting off a false fire alarm; or tampering with, removing, or damaging fire alarms, fire extinguishers or any other safety or emergency equipment from its proper location except when removed in a situation in which there is a reasonable belief of the need for such equipment.
- (15) University Keys, Access Cards, and Identification. Possessing, using, or duplicating University keys, University access cards, or University identification cards without authorization from the University.
- (16) Information Technology. Theft, misuse, or unauthorized use of information technology facilities, resources, or access codes, including, without limitation: unauthorized entry into or transfer of a

file; using another person's identification and/or password without that person's consent; using information technology facilities or resources to interfere with the work of another student, faculty member, staff member, or other member of the University community; using information technology facilities or resources to interfere with normal operation of a University information technology system or network; circumventing University information technology system or network security; using information technology facilities or resources in violation of copyright laws; falsifying an e-mail header; and conduct that violates the University's policy on the acceptable use of information technology resources.

- (17) Weapons. Possessing, carrying, using, storing, or manufacturing any weapon on University-controlled property or in connection with a University-affiliated activity, unless authorized in writing by the Chief of Police or his/her designee or unless federal or state law affirmatively gives a student a right, irrespective of this Chapter, to possess or carry a weapon on University-controlled property or in connection with a University-affiliated activity.
- (18) Alcohol-Related Conduct – University Property or University Activities. Consuming, manufacturing, possessing, distributing, dispensing, selling, or being under the influence of alcoholic beverages on University-controlled property or in connection with a University-affiliated activity unless expressly permitted by University policy.
- (19) Alcohol-Related Conduct Prohibited by Law. Consuming, manufacturing, possessing, distributing, dispensing, selling, or being under the influence of alcoholic beverages, if prohibited by federal, state, or local law.
- (20) Providing Alcohol to Underage Person. Providing an alcoholic beverage to a person younger than twenty-one (21) years of age, unless permitted by law.
- (21) Drugs and Drug Paraphernalia. Using, manufacturing, possessing, distributing, selling, dispensing, or being under the influence of drugs, if prohibited by federal, state, or local law; using, manufacturing, possessing, distributing, or selling drug paraphernalia, if prohibited by federal, state, or local law; using or possessing a prescription drug if the prescription was not issued to the student; or distributing or selling a prescription drug to a person to whom the prescription was not originally issued.
- (22) Failure to Fulfill a University Financial Obligation. Failing to timely fulfill a University bill, account, or other financial obligation owed to the University.
- (23) Failure to Respond, Comply, or Identify. Failing to respond to a request to report to a University administrative office; failing to comply with a lawful directive of a University employee or other public official acting within the scope of his/her duties; or failing to identify oneself to a University employee or other public official acting within the scope of his/her duties when requested to do so.
- (24) Failure to Appear. Failing to appear at a University hearing, including, without limitation, a hearing of a University conduct board, following a request to appear either as a party or as a witness, unless the student has a right to not appear under state or federal law.
- (25) Violation of Interim Administrative Actions, Disciplinary Sanctions, or Conditions of Re-Enrollment. Violating the terms of a no-contact directive, an interim restriction (e.g., interim suspension), a disciplinary sanction, or a condition of re-enrollment imposed by the University.
- (26) Obstruction or Disruption of University Activity. Obstructing or disrupting teaching, learning, studying, research, public service, administration, disciplinary proceedings, emergency services, or any other University-affiliated activity, or the free flow of pedestrian or vehicular traffic on University-controlled property. In no event shall this rule be construed to discipline a student for speech protected by the First Amendment to the United States Constitution.
- (27) Violation of University Policy or Rule. Violating a University policy or rule, including, without limitation, University policies or rules relating to facilities' use, smoking, the acceptable use of information technology resources, research misconduct, finder's fees relating to clinical investigations involving human subjects or access to University data or materials, University

libraries, dining services, parking or transportation, University identification card use, sexual harassment, residence halls, and registered student organizations.

- (28) Act Prohibited by Law. Committing an act that is prohibited by local, state, or federal law.
- (29) Attempted Violation; Accessory to Violation. Attempting to commit a violation of a Standard of Conduct or being an accessory to the commission of an act or attempted act in violation of a Standard of Conduct.
- (30) Retaliation. Engaging in retaliation. Retaliation is an act or omission committed by a student because of another person's participation in a protected activity that would discourage a reasonable person from engaging in protected activity, including, without limitation, any act or omission constituting "retaliation" under the University's Policy on Sexual Harassment, Sexual Assault, Dating and Domestic Violence, and Stalking and University rules. Retaliation violates the Standards of Conduct regardless of whether the underlying allegation of a violation of the Standards of Conduct is ultimately found to have merit. Retaliation can include, without limitation: (a) an act or omission committed against a person's family, friends, advisors, and/or other persons reasonably expected to provide information in connection with a University investigation or hearing; and (b) an act or omission committed by a student through a third party.

**Authority:** T.C.A. § 49-9-209(e).

#### **1720.03-03.07 INTERIM SUSPENSION**

**AMEND** rule 1720-03-03-.07, so that at the expiration of Emergency Rule 1720-03-03-.07, the amended rule 1720-03-03-.07 shall read as follows:

#### **1720-03-03-.07 INTERIM SUSPENSION.**

- (1) When the Chief Student Affairs Officer or his/her designee has reasonable cause to believe that a student's or student organization's continued presence on University-controlled property or at University-affiliated activities poses a significant risk of substantial harm to the health or safety of others or to property or poses an ongoing threat to the disruption of, or interference with, the normal operations of the University, the Chief Student Affairs Officer or his/her designee may impose an interim suspension prior to the conclusion of a full hearing on the alleged misconduct.
- (2) An interim suspension shall be confirmed by a notice that explains the basis for the interim suspension and shall remain in effect until the conclusion of a full hearing in accordance with the rules of the University, which shall be held without undue delay.
- (3) Within three (3) business days of the imposition of the suspension, the student or student organization shall be offered an opportunity to appear personally before the Chief Student Affairs Officer or his/her designee in order to discuss the following issues only: (a) the reliability of the information concerning the student's or student organization's conduct; and (b) whether the conduct and surrounding circumstances reasonably indicate that the student's or student organization's continued presence on University-controlled property or at University-affiliated activities poses a significant risk of substantial harm to the health or safety of others or to property or poses an imminent threat of disruption of or interference with the normal operations of the University.
- (4) During an interim suspension, the student or student organization shall be denied access to University-controlled property, including residence halls, and all other University-affiliated activities or privileges for which the student might otherwise be eligible, as the Chief Student Affairs Officer or his/her designee determines in his/her sole discretion to be appropriate. A student or student organization who receives an interim suspension and violates the terms of the interim suspension shall be subject to further disciplinary action and may be treated as a trespasser. Permission to be on University-controlled property or participate in University-affiliated activities may be granted by the Chief Student Affairs Officer or his/her designee.

- (5) Notwithstanding any other provision in this Section .07 to the contrary, in any case in which a Formal Complaint is filed that includes Title IX Allegations, the Chief Student Affairs Officer may impose an interim suspension on a student only after undertaking an individualized safety and risk analysis, and determining that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of Sexual Harassment justifies removal of the student. The Chief Student Affairs Officer will provide the student notice and an opportunity for the student to challenge an interim suspension or removal within three (3) business days.

**Authority:** T.C.A. § 49-9-209(e).

#### **1720.03-03.08 HEARING PROCEDURES**

**AMEND** rule 1720-03-03-.08, so that at the expiration of Emergency Rule 1720-03-03-.08, the amended rule 1720-03-03-.08 shall read as follows:

#### **1720-03-03-.08 HEARING PROCEDURES.**

- (1) Conflicts of Interest.
  - (a) The student conduct process must be carried out in a manner that is free from conflicts of interest or bias and is consistent with due process of law.
  - (b) In all cases involving allegations of sexual assault, dating violence, domestic violence, or stalking and/or retaliation, the student conduct process must include protections for the accused student/respondent analogous to, and no less protective than, the conflict of interest provisions of Tennessee Code Annotated § 4-5-303. Notwithstanding the preceding sentence: 1. an attorney for the University is allowed to provide legal advice to multiple University employees who serve in different roles in the process of disciplining a student; and 2. the University is allowed to provide the alleged victim/complainant with equivalent rights as the accused student/respondent during the student conduct process.
- (2) Allegations of Sexual Harassment, Sexual Assault, Dating Violence, Domestic Violence, Stalking, or Sexual Exploitation.
  - (a) Case Initiation. In cases involving allegations of sexual harassment, sexual assault, dating violence, domestic violence, stalking, or sexual exploitation, the student conduct process is initiated upon the filing of a Formal Complaint by a Complainant or by the Title IX Coordinator. As soon as practicable after the filing of a Formal Complaint, the Student Conduct Officer will provide a Notice of Receipt of Formal Complaint to the parties who are known. The Notice of Receipt of Formal Complaint shall include the following information: 1. notice of the student conduct process that applies to the allegations; 2. the identities of the parties involved in the incident; 3. the conduct allegedly constituting the violation; 4. the date and location of the incident, if known; 5. a statement that the Respondent is presumed not responsible for the alleged conduct; 6. a statement that a determination regarding responsibility is made at the conclusion of the student conduct process; 7. the parties' right to have an advisor of their choice, who may be, but is not required to be, an attorney; 8. the parties' right to inspect and review evidence; and 9. notice of the provisions of the Standards of Conduct that prohibit providing false information to a University official.
  - (b) Right to an Advisor. The Complainant and the Respondent each may be assisted by one (1) advisor of their choice and at their own cost during all stages of the student conduct process. The advisor may be, but is not required to be, an attorney. If a Complainant or Respondent does not have an advisor present at a Title IX Hearing, the University must provide one (1) (selected by the University) without fee or charge to that party. The role of an advisor is limited to assisting, advising, and/or supporting a Complainant or Respondent during the student conduct process, including at all meetings, investigative interviews, and hearings. An advisor is not permitted to speak for or on behalf of a Complainant or Respondent, appear in lieu of a Complainant or Respondent, participate as a witness, or participate directly in any other manner during any phase of the student conduct process, except in a Title IX Hearing. In a Title IX Hearing, the advisor is permitted to



speaking on behalf of a Complainant or Respondent for the purposes of asking questions of the other party and witnesses, in accordance with Section .08(5)(e)(6) of this Chapter.

(c) Investigations.

1. Investigations of allegations of sexual harassment, sexual assault, dating violence, domestic violence, stalking, or sexual exploitation will be conducted by the Student Conduct Officer or another person or organization designated to serve as the investigator in accordance with University rules or policy.
2. Investigations will be conducted in a prompt, fair, and impartial manner.
3. When conducting an investigation, the Student Conduct Officer (or other designated investigator) will act as a fair and impartial party rather than as a representative of either party.
4. During an investigation, the Complainant(s), the Respondent(s), witnesses, or any other persons may be interviewed, and other relevant information and documentation will be obtained as applicable. The Student Conduct Officer (or other designated investigator) may re-interview the Complainant(s), Respondent(s), witnesses, and/or any other person at any time during the investigation in order to obtain additional and/or clarifying information.
5. During an investigation, the Student Conduct Officer will (i) ensure that the burden of proof and burden of gathering evidence rests on the University and not on the parties; (ii) provide an equal opportunity for the parties to identify and present witnesses for interview, including fact witnesses and expert witnesses, and other inculpatory and exculpatory evidence; (iii) and provide written notice of the date, time, location, participants, and purpose of all investigative interviews and other meetings, with sufficient time to prepare to participate.
6. The Student Conduct Officer will provide both parties with an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in the Formal Complaint. Prior to completion of the investigative report, the Student Conduct Officer will send to each party and the party's advisor, if any, the evidence subject to inspection and review. The parties must have at least ten (10) business days to submit a written response, which the Student Conduct Officer will consider prior to completion of the investigative report. After the investigative report is completed, the parties must have at least ten (10) business days to submit a written response to the report, and no hearing shall occur until that period has lapsed even if the parties have submitted responses prior to the expiration of the ten (10) day period.

- (d) Other Rights. In addition to any other rights provided under this Code, the Complainant and the Respondent in a case involving allegations of sexual harassment, sexual assault, dating violence, domestic violence, stalking, or sexual exploitation shall have the rights outlined in the University's Policy on Sexual Harassment, Sexual Assault, Dating and Domestic Violence, and Stalking.

(3) Notice of Charges.

- (a) A person charged with misconduct will receive written notification of the following:
1. The substance of the charge(s) against him/her.
  2. The disciplinary action taken or proposed.
  3. His/her right to a hearing should he/she wish to contest the charge(s) or action.
  4. To whom a request for a hearing should be addressed.

5. That a request for a hearing must be made within five (5) days of the person's receipt of this notice.
  6. His/her right to be accompanied by no more than one (1) advisor during the hearing, including but not limited to a parent, spouse, friend, or attorney. The role of the advisor shall be limited to providing advice or support to the accused student. Even if accompanied by an advisor, the accused student is responsible for presenting his/her own case to the hearing panel. An advisor is not permitted to: introduce evidence; raise objections; present arguments; address directly the members of the hearing panel, the student conduct officer, or any witnesses participating in the hearing; or otherwise participate in the hearing. In consideration of the limited role of the advisor, and of the compelling interest of the University to expeditiously conclude the matter, a hearing shall not be delayed due to the unavailability of an advisor.
  7. His/her rights to a hearing under the Uniform Administrative Procedures Act, T.C.A. § 4-5-101 et seq. ("UAPA"). In the absence of a voluntary written waiver of his/her rights to a hearing under the provisions of the UAPA, a requested hearing will be conducted in accordance with the University's rules for conducting contested case proceedings under the UAPA, Chapter 1720-01-05, and the hearing procedures in this Section .08 shall not apply.
    - (b) The preceding provisions of this Section .08(3)(a) do not apply to cases in which a Formal Complaint has been filed that includes Title IX Allegations.
- (4) Hearing Panel or Hearing Examiner.
- (a) Notice of Hearing Concerning Allegations of Sexual Assault, Dating Violence, Domestic Violence, or Stalking and/or retaliation. At least seventy-two (72) hours prior to a hearing under this Section .08(4) concerning allegations of sexual assault, dating violence, domestic violence, or stalking and/or retaliation, the University shall provide the accused student/respondent with notice of the following: 1. the time, place, and date of the hearing; 2. the name of each witness the University expects to present at the hearing and those the University may present if the need arises; 3. notice of the right to request a copy of the University's investigative file, redacted in accordance with the Family Educational Rights and Privacy Act of 1974, (20 U.S.C. § 1232g), and the federal regulations implementing that statute, as amended; and 4. notice of the right to request copies of all documents, copies of all electronically stored information, and access to tangible evidence that the University has in its possession, custody, or control and may use to support claims or defenses, unless the use would be solely for impeachment.
  - (b) Hearing Panel or Hearing Examiner - A requested hearing will be provided by a panel of individuals or a hearing examiner, selected in accordance with policies of the University or, in the absence of applicable policies or procedures, by the Chancellor of the University or his/her designee. The hearing will be conducted by a panel chairman similarly selected. Panel members shall be impartial and anyone lacking such impartiality shall recuse himself or be removed by the Chancellor of the University or his/her designee upon the request of any party to a hearing. Neither the Student Conduct Officer nor a person who investigated the allegations of misconduct against the accused student shall be a member of the hearing panel or advise the hearing panel.
  - (c) Hearing Process - The chairman of a hearing panel or hearing examiner will conduct the hearing, without regard to technical rules of procedure, in such manner as will best serve the cause of justice within the following general guidelines:
    1. Each party to a hearing will be afforded a full and fair opportunity to present all evidence including witnesses, reasonably relating to the charge or action at issue; evidence which is irrelevant, immaterial, repetitious or voluminous may be limited.
    2. The hearing panel or examiner will consider all evidence presented, giving due consideration to the credibility or weight of each item presented; technical rules of

evidence will not apply.

3. Each party will have the right to question opposing witnesses.
  4. A record will be made of the hearing procedures. However, defects in the record will not invalidate the proceedings.
  5. The University will have the burden of providing, by a preponderance of the evidence, the truth of the charge(s) at issue. Where the charge(s) is found to be true, the person charged will have the burden of proving that the disciplinary action taken or proposed is arbitrary, capricious, or unreasonable.
  6. Following the conclusion of the hearing, the hearing panel or examiner will consider the evidence and present written findings within a reasonable time.
  7. In cases involving an allegation of sexual assault, dating violence, domestic violence or stalking, the hearing procedures shall be modified to afford the parties all of the rights required by Title IX of the Education Amendments of 1972, the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, and other applicable law.
- (d) For purposes of this Section .08(4), the decision of any board or administrative officer of the University is subject to review by the Chancellor.
- (e) The preceding hearing provisions of this Section .08(4) do not apply to cases in which a Formal Complaint is filed alleging Title IX Allegations. All such Formal Complaints will proceed to a Title IX Hearing in accordance with Section .08(5) unless resolved prior to the Title IX Hearing.
- (5) Title IX Hearings.
- (a) Any case involving Title IX Allegations will be resolved through a Title IX Hearing. The Title IX Hearing must be conducted in accordance with 34 C.F.R. 106.45.
  - (b) Appointment of Title IX Hearing Officer. The Chief Student Affairs Officer will appoint a qualified Title IX Hearing Officer to conduct the Title IX Hearing and will notify the parties and their advisors, if any, of the appointment. The Title IX Hearing Officer may be a University employee, a team of University employees, an external person engaged to conduct the Title IX Hearing, or a team of external people engaged to conduct the Title IX Hearing. A party may object to the appointment of any Title IX Hearing Officer, in writing to the Office of Student Conduct. Any objection must be received within three (3) days of the notice of appointment, and it must state the party's grounds for objecting. The Chief Student Affairs Officer will decide whether an objection is justified, and that decision is final. If a Title IX Hearing Officer is removed based on an objection, the Chief Student Affairs Officer will appoint a new qualified Title IX Hearing Officer to conduct the Title IX Hearing.
  - (c) Notice of Title IX Hearing.
    1. When a Notice of Title IX Hearing is Sent. The Title IX Hearing Officer will send the Respondent and the Complainant a Notice of Title IX Hearing at least ten (10) business days in advance of the date of the hearing.
    2. Information in the Notice of Title IX Hearing. The Notice of Title IX Hearing will contain, or be accompanied by, the following information: (i) the date, time, and place of the Title IX Hearing; (ii) notice of 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 University must provide an advisor of the University'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; (iii) notice that any cross-examination of any other party or witness must be conducted

by the advisor, and never by a party personally; and (iv) notice that all of the evidence obtained as part of the investigation that is directly related to the allegations raised in the Formal Complaint will be available to the parties at the hearing. Other pre-hearing information may also be included in the Notice of Title IX Hearing. Any Title IX Hearing may be rescheduled by the Title IX Hearing Officer or upon request of any party and for good cause shown.

3. Consequences of Failing to Attend a Title IX Hearing. If a party fails to attend a Title IX Hearing, the Title IX Hearing Officer may proceed with the Title IX Hearing without that party's participation.

(d) General Rules Governing Title IX Hearings.

1. The Title IX Hearing will take place no sooner than ten (10) business days after the parties' receipt of the written investigative report.
2. The Title IX Hearing Officer may conduct pre-hearing meetings or conferences with the parties and their advisors, if any, to discuss any pre-hearing issues, including but not limited to, the date of the hearing, the location of the hearing, any technology to be used at the hearing, the general rules governing the hearing, including any rules of decorum, the identification of witnesses, and the availability of evidence at the hearing.
3. Each party must notify the Title IX Hearing Officer at least five (5) business days before the hearing of the identity of the party's advisor, if any, or that the party does not have an advisor so that the University can provide an advisor.
4. At the request of either party, the Student Conduct Officer will provide for the hearing to occur with the parties located in separate rooms with technology enabling the Title IX Hearing Officer and parties to simultaneously see and hear the party or the witness answering questions.
5. Upon request of a party and for good cause shown, the Title IX Hearing Officer may permit the participation of witnesses at the Title IX Hearing who were not identified by the party to the investigator, or the inclusion of evidence at the Title IX Hearing that was not provided by the party to the investigator.

(e) Procedural Rules for Title IX Hearings.

1. Authority of the Title IX Hearing Officer. The Title IX Hearing Officer has the authority to maintain order and make all decisions necessary for the fair, orderly, and expeditious conduct of the Title IX Hearing. The Title IX Hearing Officer shall be the final decision maker concerning what, how, and in what order witnesses are questioned and evidence is examined.
2. Exclusion of Information.
  - (i) 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 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 the Respondent and are offered to prove consent.
  - (ii) The University cannot access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with

the provision of treatment to the party, unless the University obtains that party's voluntary, written consent to do so.

- (iii) The University cannot 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 such privilege has waived the privilege.
3. Preliminary Matters. The Title IX Hearing Officer shall begin the hearing by explaining the substance of the allegations and the specific University rule or policy allegedly violated.
  4. Attendance and Participation. Attendance during a Title IX Hearing generally is limited to the Title IX Hearing Officer, a representative from the Office of Student Conduct, the Complainant and the Complainant's advisor, the Respondent and the Respondent's advisor, and witnesses. Witnesses may attend the Title IX Hearing only while they are presenting information to the Title IX Hearing Officer, unless the witness is the Complainant or the Respondent. The Title IX Hearing Officer and the Student Conduct Officer have the discretion to allow other persons to attend the Title IX Hearing, in accordance with state and federal law.
  5. Opening Statements. The Complainant and then the Respondent may make a brief statement of no longer than ten (10) minutes to the Title IX Hearing Officer, and they may provide a written copy of their statements to the Title IX Hearing Officer at the hearing. The Title IX Hearing Officer will provide a copy of any written statement received to the other party.
  6. Questioning the Witnesses. Following any opening statements, the Title IX Hearing Officer will question the Complainant, the Respondent, and any witnesses requested by the parties or deemed to have relevant information by the Title IX Hearing Officer. The Title IX Hearing Officer 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 must be conducted directly, orally, and in real time by the party's advisor of choice and never by a party personally. Only relevant cross-examination and other questions may be asked of a party or witness. Before the Complainant, the Respondent, or any witness answers a cross-examination or other question, the Title IX Hearing Officer must first determine whether the question is relevant and explain any decision to exclude a question as not relevant. If a party or witness does not submit to cross-examination at the hearing, the Title IX Hearing Officer must not rely on any statement of that party or witness in reaching a determination regarding responsibility; provided, however, that the Title IX Hearing Officer cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the hearing or refusal to answer cross-examination or other questions.
  7. Closing Statements. At the close of the Title IX Hearing, the Title IX Hearing Officer may allow the Complainant and the Respondent equal opportunities to make statements summarizing the information presented to the Title IX Hearing Officer and/or advocating the decision that the Title IX Hearing Officer should reach.
- (f) Recording of the Title IX Hearing. The University will create an audio or audiovisual recording or transcript of the hearing and make it available to the parties for inspection and review.
  - (g) Notice of Decision. Within fifteen (15) business days of the hearing, the Title IX Hearing Officer must issue a written determination regarding responsibility ("Notice of Decision"). The Notice of Decision must include 1. identification of the allegations potentially constituting Sexual Harassment; 2. a description of the procedural steps taken from the receipt of the Formal Complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence,

and hearings held; 3. findings of fact supporting the determination; 4. conclusions regarding the application of the Standards of Conduct to the facts; 5. a statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions imposed on the Respondent, and whether remedies designed to restore or preserve equal access to the University's education program or activity will be provided by the University to the Complainant; and 6. the procedures and permissible bases for the Complainant and Respondent to appeal. In deciding the appropriate sanctions for a Respondent's misconduct, the Title IX Hearing Officer may consider information provided at the hearing by the Complainant, the Respondent, or any other witness with relevant information concerning the appropriate sanctions, if the Respondent is determined responsible.

(h) Notice of Decision to the Student Conduct Officer. The Title IX Hearing Officer shall transmit a copy of the Notice of Decision to the Student Conduct Officer. The Student Conduct Officer shall notify the Respondent, the Complainant, and their advisors about the written determination and provide a copy of it simultaneously to the parties and their advisors.

(i) Appeal of Decision of Title IX Hearing Officer. The Complainant and the Respondent may appeal the decisions of the Title IX Hearing Officer (or the dismissal of a Formal Complaint), but the grounds for appeal are limited to those described in Section .08(5)(h)(2).

1. Notice of Appeal. The Notice of Appeal shall be received by the Vice Chancellor of Academic, Faculty, and Student Affairs (VCAFSA) within five (5) business days of the date that the Student Conduct Officer transmitted the Notice of Decision.

2. Grounds for Appeal. The Notice of Appeal shall explain the grounds for the appeal, which shall be limited to one (1) or more of the following grounds:

(i) Procedural Error. A procedural irregularity affected the outcome of the matter.

(ii) New Evidence. New evidence that was not reasonably available at the time the determination regarding responsibility was made, that could affect the outcome of the matter.

(iii) Conflict of Interest or Bias. The Title IX Coordinator, the investigator(s), or the Title IX Hearing Officer had a conflict of interest or bias for or against complainants or respondents generally or the individual Complainant or Respondent that affected the outcome of the matter.

(iv) Clearly Unreasonable Sanction. The sanction(s) imposed by the Title IX Hearing Officer is clearly unreasonable (i.e., has no sound basis or justification in reason).

(v) Clearly Erroneous Outcome. The Title IX Hearing Officer made a clear error in determining that the Respondent is or is not responsible for misconduct.

3. Appeal Process. Each party may submit a written statement in support of or challenging the outcome of the Title IX Hearing. The written statement must be received by VCAFSA within five (5) business days of the date on which the Notice of Appeal was filed, or on which the non-appealing party received notice that the other party filed a Notice of Appeal. Within five (5) business days of the receipt of the last written statement, the VCAFSA will issue a written decision (Notice of Title IX Final Decision) describing the result of the appeal and the rationale for the result, which will be provided simultaneously to both parties. The decision of the VCAFSA is final and not further appealable.

(6) Emergency Conditions. When, in the judgment of the Chancellor of the University, conditions are such that an emergency exists which makes it impossible for the system of judicial boards

to function, he/she may suspend the procedural regulations described in this Chapter. If the procedures are suspended, he/she may substitute for them arrangements for handling disciplinary matters that will ensure the orderly functioning of the University and at the same time safeguard the basic rights of the students.

**Authority:** T.C.A. § 49-9-209(e).

I certify that the information included in this filing is an accurate and complete representation of the intent and scope of rulemaking proposed by the agency.

Date: August 27, 2020

Signature: 

Name of Officer: C. Ryan Stinnett

Title of Officer: General Counsel

**Department of State Use Only**

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Tre Hargett  
Secretary of State

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