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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.

Agency/Board/Commission:	University of Tennessee (Martin)
Division:	
Contact Person:	C. Ryan Stinnett, General Counsel
Address:	719 Andy Holt Tower, Knoxville, TN 37996
Phone:	865-974-2540
Email:	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:

ADA Contact:	Melissa Tindell
Address:	P267 Andy Holt Tower, 1331 Circle Park, Knoxville, TN 37996
Phone:	865-974-0741
Email:	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.)

Chapter Number	Chapter Title
1720-05-01	Student Rights and Responsibilities
Rule Number	Rule Title
1720-05-01-.02	Definitions
1720-05-01-.04	Standards of Conduct
1720-05-01-.07	Interim Suspension
1720-05-01-.08	Hearing Procedures
1720-05-01-.09	Appeals

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

1720-05-01-.02 DEFINITIONS.

AMEND rule 1720-05-01-.02, so that at the expiration of Emergency Rule 1720-05-01-.02, the amended rule 1720-05-01-.02 shall read as follows:

1720-05-01-.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) **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.
- (5) **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 types of Formal Complaints: (i) Formal Complaints that include Title IX Allegations (as defined under Section .02(15)); and (ii) 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.
- (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: (1) opposition to conduct prohibited under the Standards of Conduct; (2) report to the University about conduct prohibited under the Standards of Conduct to the University; (3) participation (or reasonable expectation of participation) in any manner in an investigation, meeting, hearing, or interim measure; or (4) 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 or more of the following: (1) 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; (2) 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 (3) 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 1720-05-01-.04.
- (13) Student: For purposes of this Chapter, the term "student" means:
 - (a) 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;
 - (b) A student organization;
 - (c) A person who has completed the immediately preceding academic term and is eligible for re-enrollment;
 - (d) 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);
 - (e) A person who attended the University during a previous academic term and who engaged in misconduct during the time of enrollment; and/or
 - (f) A person who has been admitted to the University and later matriculates at the University, with respect to misconduct:
 1. That occurs as part of the application process; or
 2. That occurs post-admission and pre-matriculation and falls within the jurisdiction of the Code (e.g., occurs on University-controlled property).
- (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 federal regulations, 34 C.F.R. 106.30(a).
- (16) "UAPA" means the Uniform Administrative Procedures Act, Tennessee Code Annotated § 4- 5-

101 et seq.

- (17) University: The University of Tennessee at Martin, 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).

1720-05-01-.04 STANDARDS OF CONDUCT.

AMEND rule 1720-05-01-.04, so that at the expiration of Emergency Rule 1720-05-01-.04, the amended rule 1720-05-01-.04 shall read as follows:

1720-05-01-.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, Sexual Exploitation, 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: (1) 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 (2) an act or omission committed by a student through a third party.

Authority: T.C.A. § 49-9-209(e).

1720-05-01-.07 INTERIM SUSPENSION.

AMEND rule 1720-05-01-.07, so that at the expiration of Emergency Rule 1720-05-01-.07, the amended rule 1720-05-01-.07 shall read as follows:

1720-05-01-.07 INTERIM SUSPENSION.

- (1) When the Vice Chancellor for Student Affairs 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 Vice Chancellor for Student Affairs 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 written statement 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. The statement shall be delivered to the student in person, to the address the University has on file for the student, or to the student's University-provided e-mail account. The statement shall be delivered in person or via e-mail to the advisor to the student organization.
- (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 Vice Chancellor for Student Affairs or his/her designee in order to discuss the following issues only: (a) the reliability of the information concerning the student'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 or student organization might otherwise be eligible, as the Vice Chancellor for Student Affairs 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 Vice Chancellor for Student Affairs or his/her designee.
- (5) When a student is placed on interim suspension from the University, he/she may be assigned a grade of "W" or "I," whichever is deemed more appropriate by the faculty member involved.

- (6) Notwithstanding any other provision in this Section .07, in any case in which a Formal Complaint is filed that includes Title IX Allegations, the Vice Chancellor for Student Affairs may impose an interim suspension on a Respondent 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 Respondent. The Vice Chancellor for Student Affairs will provide the Respondent notice and an opportunity for the Respondent to challenge an interim suspension or removal within three (3) business days.

Authority: T.C.A. § 49-9-209(e).

1720-05-01-.08 HEARING PROCEDURES.

AMEND rule 1720-05-01-.08, so that at the expiration of Emergency Rule 1720-05-01-.08, the amended rule 1720-05-01-.08 shall read as follows:

1720-05-01-.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 (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 speak on behalf of a Complainant or Respondent for the purposes of asking questions of the other party and witnesses, in accordance with Section .08(8)(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 Office of Student Conduct unless another person or organization is 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 Office of Student Conduct (or other designated investigator) will act as a fair and impartial party rather than as a representative of the person who filed the Formal Complaint.
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 Office of Student Conduct (or other designated investigator) may interview and 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 Office of Student Conduct 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 Office of Student Conduct 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 Office of Student Conduct 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 Office of Student Conduct 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.

(3) Notice of Charges.

- (a) A student charged with violating the Standards of Conduct, Chapter 1720-05-01-.04, shall be provided written notice of:
 1. The substance of the charge(s) against him/her;
 2. The disciplinary action taken or proposed; and
 3. His/her rights to a hearing should he/she wish to contest the charge(s) and information concerning the process for requesting a hearing, including the requirement that a request for a hearing before the Disciplinary Hearing Board must be made within five (5) days of the student's receipt of the notice of the charges against him/her.
- (b) This Section .08(3)(a) does not apply to Formal Complaints that include Title IX

Allegations.

- (4) Hearing Options. A student charged with violating the Standards of Conduct, Chapter 1720-05-01-.04, shall have the following options for a hearing:
 - (a) An administrative hearing before the Student Conduct Officer;
 - (b) A hearing before the Disciplinary Hearing Board;
 - (c) A hearing before a Title IX Hearing Officer ("Title IX Hearing"), which is described in Section .08(8) and which is the only hearing option provided under the Code for determining responsibility for Title IX Allegations; or
 - (d) A hearing in accordance with the University's rules for conducting contested case proceedings under the Uniform Administrative Procedures Act ("UAPA Hearing"). All disciplinary cases that may result in suspension or permanent dismissal of a student, the revocation of a degree, or the revocation of registration of a student organization are subject to the contested case provisions of the UAPA. The University's procedures for conducting contested case hearings under the UAPA are contained in Chapter 1720-01-05, and the University's rules concerning waivers of contested case proceedings are contained in Chapter 1720-01-03. Disciplinary hearings will be conducted in accordance with the University's procedures for conducting contested case proceedings under the UAPA unless the student waives those procedures in writing and elects to have his or her case resolved in accordance with Section .08(6) or Section .08(7).
- (5) Notice of Hearing Concerning Allegations of Sexual Harassment, Sexual Assault, Dating Violence, Domestic Violence, Stalking and Sexual Exploitation/or Retaliation. In administrative hearings before the Student Conduct Officer or hearings before the Disciplinary Hearing Board, at least seventy-two (72) hours prior to a hearing under Section .08(4) concerning allegations of sexual harassment, sexual assault, dating violence, domestic violence, stalking, sexual exploitation, and/or retaliation, the University shall provide the accused student/respondent with notice of the following: (a) the time, place, and date of the hearing; (b) the name of each witness the University expects to present at the hearing and those the University may present if the need arises; (c) 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 (d) 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.
- (6) Administrative Hearing. A student charged with violating the Standards of Conduct has a right to resolve a disciplinary case through an administrative hearing with the Student Conduct Officer by accepting responsibility for violating the Standards of Conduct. Following the student's written acceptance of responsibility and written waiver of the right to a hearing under the UAPA, the Student Conduct Officer will assess a penalty that is appropriate under Chapter 1720-05-01-.05. Following the assessment of the penalty, the student may acknowledge the acceptance of the penalty in writing or appeal the penalty to the Vice Chancellor for Student Affairs in accordance with Chapter 1720-05-01-.09. A student who resolves a disciplinary case through an administrative hearing with the Student Conduct Officer may only appeal the penalty to the Vice Chancellor for Student Affairs.
- (7) Disciplinary Hearing Board.
 - (a) The Disciplinary Hearing Board is an ad hoc board composed of five (5) members of the University Council, in addition to the Vice Chancellor for Student Affairs, who shall serve as the non-voting chairperson of the Disciplinary Hearing Board. The Disciplinary Hearing Board hears cases of alleged violations of the Standards of Conduct and other cases deemed appropriate by the Vice Chancellor for Student Affairs. The Vice Chancellor for Student Affairs shall select the members of the Disciplinary Hearing Board from the membership of the University Council. A majority vote of the members present is required for all decisions of the board.

- (b) A request for a hearing before the Disciplinary Hearing Board shall be made within five(5) days of the student's receipt of the notice of the charges against him/her. A hearing shall be scheduled promptly after receipt of the request for a hearing. A student shall be notified of the date, place, and time for the hearing at least seventy-two (72) hours in advance of the hearing. A student has no right to have a hearing before the Disciplinary Hearing Board unless the student waives the provisions of the UAPA in writing.
- (c) Members of the Disciplinary Hearing Board shall be impartial and anyone lacking such impartiality shall recuse himself/herself. The accused student has the right to challenge any member of the Disciplinary Hearing Board for good cause and request that he/she be dismissed and replaced. The chairperson of the Board determines whether to dismiss and replace a member of the Disciplinary Hearing Board. Neither the Student Conduct Officer nor a person who investigated the allegations of misconduct against the accused student shall be a member of the Disciplinary Hearing Board or advise the Disciplinary Hearing Board.
- (d) The chairperson of the Disciplinary Hearing Board will conduct the hearing, without regard to technical rules of procedures in such a manner as will best serve the cause of justice within the following general guidelines:
 - 1. An accused student has a right to a hearing closed to the public. In cases involving more than one (1) student, the chairperson may permit the hearings concerning each student to be conducted separately.
 - 2. The chairperson shall rule on all motions, objections, and other procedural issues. The chairperson shall ascertain that the accused student has been advised of the charges against him/her and shall then read a statement describing the charges. A student who fails to appear before the Disciplinary Hearing Board following proper notice shall be deemed to have waived his/her rights to be present during the hearing, to know the evidence against him/her, to present evidence in his/her own behalf, and to exercise reasonable cross- examination of witnesses appearing against him/her. This waiver shall become effective if the student fails to appear at the designated time and place of the hearing unless, at least twenty-four (24) hours prior to the hearing, the student communicates in writing to the Dean of Students good cause for granting a continuance of the hearing. However, no student may be found to have violated the Standards of Conduct solely because the student failed to appear before the Disciplinary Hearing Board. In all cases, the evidence in support of the charges shall be presented to and considered by the Disciplinary Hearing Board.
 - 3. The accused shall enter a plea of responsible or not responsible. If a responsible plea is entered, he/she shall be advised of the maximum penalty, and the Board shall review the circumstances of the case and make appropriate decisions or recommendations regarding the penalty.
 - 4. The accused student may 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 Disciplinary Hearing Board. An advisor is not permitted to: introduce evidence; raise objections; present arguments; directly address the members of the Disciplinary Hearing Board, 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. The accused student shall inform the Student Conduct Officer of the name of the student's advisor, if any, at least three (3) days before the hearing before the Disciplinary Hearing Board.
 - 5. Each party to a hearing shall be given an opportunity to make opening and closing statements.

6. Each party to a hearing shall be afforded a full and fair opportunity to present all evidence, including witnesses, reasonably relating to the charge or action at issue. Each party will have the right to question opposing witnesses. Technical rules of evidence will not apply. Evidence which is irrelevant, immaterial, repetitious or voluminous may be limited or excluded. Hearsay evidence is admissible. If a not responsible plea has been entered, evidence in mitigation of the alleged offense shall be presented only if the Board has determined that the accused student is responsible for the violation.
7. The Student Conduct Officer shall present the case on behalf of the University. The University shall have the burden of proving, by a preponderance of the evidence, the truth of the charge(s) at issue. Where the charge(s) is found to be true, the accused student shall have the burden of proving that the disciplinary action taken or proposed is arbitrary, capricious, or unreasonable.
8. The Board will consider all evidence presented, giving due consideration to the credibility or weight of each item presented. During Board deliberations all persons except the Board members shall be excused from the hearing room. The decision shall be based solely upon the evidence presented. No mention will be made during the hearing on innocence or guilt of the student's previous disciplinary record, unless appropriate as rebuttal to character evidence introduced by the accused.
9. After a determination of responsibility by the Board, the Student Conduct Officer, on behalf of the University, shall present the previous disciplinary record of the accused student if any, and evidence of any other aggravating circumstances, to the Board together with the recommendation of the Student Conduct Officer as to an appropriate penalty.
10. After presentation of evidence by the Student Conduct Officer, the accused shall be allowed to present character evidence, evidence of mitigating circumstances, and an alternative penalty recommendation.
11. After the Board determines the penalty, the accused student shall be advised in writing of its decision within forty-eight (48) hours of the hearing.
12. A record will be made of the hearing procedures. However, defects in the record will not invalidate the proceedings. The results of the Board's decision shall be kept on official University forms. If a verbatim record of the hearing is prepared, it shall be retained in the custody of the Office of Student Conduct and considered a confidential disciplinary record.
13. Appeals from decisions of the Disciplinary Hearing Board may be made to the Vice Chancellor for Student Affairs in accordance with Chapter 1720-05-01-.09.
14. In cases involving an allegation of sexual assault or misconduct, the hearing procedures shall be modified to afford the alleged victim all of the rights described in Chapter 1720-05-01-.08(9). The Disciplinary Hearing Board may consider evidence introduced by the alleged victim as part of the University's proof.

(8) Title IX Hearing.

- (a) Any case involving allegations that a Respondent's conduct constitutes Sexual Harassment in the University's education program or activity in the United States as defined in 34 C.F.R. 106.30(a) ("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 Vice Chancellor for Student Affairs 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.

(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: (1) the date, time, and place of the Title IX Hearing; (2) 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; (3) notice that any cross-examination of any other party or witness must be conducted by the advisor, and never by a party personally; and (4) 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 Office of Student Conduct 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 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 Office of Student Conduct 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 (i) identification of the allegations potentially constituting Sexual Harassment; (ii) 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; (iii) findings of fact supporting the determination; (iv) conclusions regarding the application of the Code to the facts; (v) 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 (vi) 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 Office of Student Conduct. The Title IX Hearing Officer shall transmit a copy of the Notice of Decision to the Office of Student Conduct. The Office of Student Conduct 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. The decision of the Title IX Hearing Officer may be appealed to the Vice Chancellor for Student Affairs in accordance with Section .09(2) of this Chapter.
- (9) In accordance with 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, the University will investigate and resolve reports of sexual harassment, sexual assault, dating violence, domestic violence, stalking and/or retaliation in accordance with the University’s Policy on Sexual Harassment, Sexual Assault, Dating and Domestic Violence, and Stalking and University rules, and the Respondent and the Complainant shall have the rights outlined in that Policy and University rules.

Authority: T.C.A. § 49-9-209(e).

1720-05-01-.09 APPEALS.

AMEND rule 1720-05-01-.09, so that at the expiration of Emergency Rule 1720-05-01-.09, the amended rule 1720-05-01-.09 shall read as follows:

1720-05-01-.09 APPEALS.

- (1) Appeal of Decisions of a Student Conduct Officer or Disciplinary Board Hearing. A decision of the Disciplinary Hearing Board, or a decision of the Student Conduct Officer concerning a penalty following an administrative hearing, may be appealed to the Vice Chancellor for Student Affairs.
 - (a) The request for appeal shall be submitted in writing to the Vice Chancellor for Student Affairs within five (5) business days of written notice of the decision of the Disciplinary

Hearing Board or Student Conduct Officer.

- (b) The request for appeal shall contain:
 - 1. A statement that the student or student organization appeals the decision of the Disciplinary Hearing Board or Student Conduct Officer; and
 - 2. A brief statement of the grounds for the appeal.
 - (c) All appeals to the Vice Chancellor for Student Affairs are written and heard based upon the record made before the Disciplinary Hearing Board.
 - (d) Pending the outcome of an appeal, the penalty specified in the decision of the Disciplinary Hearing Board shall not be imposed.
 - (e) The Vice Chancellor for Student Affairs may:
 - 1. Affirm the decision of the Disciplinary Hearing Board or Student Conduct Officer;
 - 2. Amend the decision of the Disciplinary Hearing Board or Student Conduct Officer;
 - 3. Return the case to the Disciplinary Hearing Board or Student Conduct Officer with instructions for reconsideration of the case; or
 - 4. Overturn the decision of the Disciplinary Hearing Board.
- (2) Appeal of Decisions of a Title IX Hearing Officer. A decision of a Title IX Hearing Officer following a Title IX Hearing (or the dismissal of a Formal Complaint alleging Title IX Allegations) may be appealed by either the Complainant or the Respondent to the Vice Chancellor for Student Affairs.
- (a) The request for appeal shall be submitted in writing to the Vice Chancellor for Student Affairs.
 - (b) The request for appeal shall contain:
 - 1. A statement that the student appeals the decision of the Title IX Hearing Officer; and
 - 2. A brief statement of the grounds for the appeal.
 - (c) Pending the outcome of an appeal, the penalty specified in the decision of the Title IX Hearing Officer shall not be imposed.
 - (d) Grounds for Appeal. The grounds for the appeal, which shall be limited to one (1) or more of the following grounds:
 - 1. Procedural Error. A procedural irregularity affected the outcome of the matter.
 - 2. 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.
 - 3. 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.
 - 4. 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).
 - (e) 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 the Vice Chancellor for Student Affairs within five (5) business days of the date on which the Notice of Appeal was filed, or within five (5) business days of the date on which the non-appealing party received notice that the other party filed a Notice of Appeal. Within ten (10) business days of the receipt of the last written statement, the Vice Chancellor for Student Affairs will issue a written decision describing the result of the appeal and the rationale for the result, which will be provided simultaneously to both parties.

- (f) The Vice Chancellor for Student Affairs may:
 - 1. Affirm the decision of the Title IX Hearing Officer;
 - 2. Amend the decision of the Title IX Hearing Officer;
 - 3. Return the case to the Title IX Hearing Officer with instructions for reconsideration of the case; or
 - 4. Overturn the decision of the Title IX Hearing Officer.
- (3) The decision of any board or administrative officer of the University of Tennessee at Martin is subject to review by the Chancellor.

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: C. Ryan Stinnett

Name of Officer: C. Ryan Stinnett

Title of Officer: General Counsel

Department of State Use Only

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Tre Hargett
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Secretary of State

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