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Emergency Rule Filing Form

Emergency rules are effective from date of filing for a period of up to 180 days.

Agency/Board/Commission:	University of Tennessee
Division:	
Contact Person:	Matthew Scoggins, Deputy General Counsel
Address:	719 Andy Holt Tower, 1331 Circle Park, Knoxville, TN
Zip:	37996-0170
Phone:	865-974-3245
Email:	scoggins@tennessee.edu

Rule Type:

Emergency Rule

Revision Type (check all that apply):

Amendment
 New
 Repeal

Statement of Necessity:

The need for this rule relates to the University of Tennessee's need to comply with Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. § 1681, and the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act), 20 U.S.C. § 1092f. From April 2011 through April 2014, the United States Department of Education's Office for Civil Rights (OCR) issued multiple guidance documents concerning the obligations of colleges and universities under Title IX to investigate and respond to reports of student-on-student sexual violence. In 2013, Congress passed and the President signed the Violence Against Women Reauthorization Act (VAWA). VAWA amended the Clery Act and imposed new obligations on universities relating to sexual assault, domestic violence, dating violence, and stalking. On July 1, 2015, regulations implementing VAWA will take effect. During the 2014-2015 academic year, in response to OCR's Title IX guidance and VAWA, all University of Tennessee (UT) campuses implemented interim policies on sexual misconduct, domestic violence, dating violence, and stalking. While the interim policies were in effect, the campuses sought and received input on the policies from students, faculty, and staff. In Fall 2015, all campuses will issue final policies on sexual misconduct, domestic violence, dating violence, and stalking. All campuses have proposed revisions to their student conduct rules that make those rules compliant with Title IX and the Clery Act (as amended by VAWA) and consistent with the standards of conduct, definitions, rights, and procedures outlined in their policies on sexual misconduct, domestic violence, dating violence, and stalking.

Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please enter only ONE Rule Number/RuleTitle 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-.08	Hearing Procedures

The University of Tennessee (Martin)
Chapter 1720-05-01
Student Rights and Responsibilities
Amendments

Rule 1720-05-01-.02 Definitions is amended by inserting descriptive language in subparagraph (9) and by deleting the language of subparagraph (10) in its entirety and substituting the following language so that, as amended, subparagraphs (9)-(10) shall read:

- (9) The term "weapon" means 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, but not limited to, firearms (loaded and unloaded, real firearms and devices that appear to a law enforcement officer to be real firearms), ammunition, electronic control devices (such as tasers and stun guns), devices designed to discharge an object (such as bb guns, air guns, pellet guns, potato guns, and slingshots, but not water guns), explosives, dangerous chemicals (such as 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.
- (10) The term "notice" means notice given in writing and transmitted by United States mail, courier service, and/or hand delivery to the address the University's Registrar has on file for the student; and/or by e-mail to the 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.

Authority: T.C.A. § 49-9-209(e) and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

Rule 1720-05-01-.02 Definitions is amended by adding the following language as new subparagraphs (11)-(28) so that, as amended, the rule shall read as follows:

- (11) The term "coercion" means words and/or conduct that, viewed from the perspective of a reasonable person, substantially impair(s) a person's ability to voluntarily choose whether to engage in a particular sexual act (e.g., sexual contact or sexual intercourse). Coercion is something more than mere seduction or persuasion. Coercion includes, without limitation: physical force; and words and/or conduct that would cause a reasonable person to fear imminent harm to the person's health, safety, or property or that of a third person; threat of the loss or impairment of a job benefit; threat of the loss or impairment of an academic benefit; kidnapping of the person or a third person; or disclosure of sensitive personal information (e.g., disclosure of a person's sexual orientation, gender identity, or gender expression).
- (12) The term "consent" means an affirmative and voluntary agreement by a person to engage in a specific sexual act. Consent must be obtained, and the responsibility for obtaining consent rests with the individual who voluntarily and physically initiates a specific sexual act, even if the other person initiated the sexual encounter.
 - (a) One's own use of alcohol, drugs, or other substances does not diminish one's responsibility to obtain Consent from the other person. Moreover, another person's use of alcohol, drugs, or other substances does not diminish one's responsibility to obtain consent from that person.
 - (b) The term "affirmative," as used in the definition of consent, means that consent is communicated only through words and/or non-verbal actions that convey a clear agreement to engage in a specific sexual act. Whether person has communicated an agreement to engage in a specific sexual act generally is evaluated from the perspective

of what a reasonable person who perceived the individual's words and/or non-verbal actions would have understood; however, in the context of a long-term relationship between persons that has involved sexual activity and a pattern of communicating consent, whether consent has been communicated may be evaluated based on a subjective standard (i.e., what did the specific person who initiated the specific sexual act conclude?). A verbal "no" (or words equivalent to "no") or the nonverbal communication of "no," even if it sounds or appears insincere or indecisive, always means that consent has not been communicated, or if previously communicated has been withdrawn. The absence of a verbal "no" or the absence of a nonverbal communication of "no" does not necessarily mean that consent has been communicated. Because interpreting non-verbal actions may lead to misunderstanding and a violation of this policy, students are strongly encouraged to err on the side of caution and not rely solely on the non-verbal actions of another person in concluding that the other person has communicated consent. The University urges students to communicate with one another before engaging in a sexual act to ensure that they both wish to engage in the same sexual act.

- (c) Consent cannot be obtained by or inferred from:
1. silence that is not accompanied by non-verbal actions conveying a clear agreement to engage in a particular sexual act;
 2. consent communicated by the other person on a previous occasion;
 3. consent communicated to another person;
 4. the other person's failure to resist physical force (however, for purposes of this rule, the other person's resistance to physical force will be viewed as a clear demonstration that the person has not communicated consent);
 5. the sexual arousal of the other person;
 6. a current or previous dating, romantic, intimate, or sexual relationship with the other person;
 7. currently or previously cohabitating with the other person;
 8. the other person's attire;
 9. the other person's reputation;
 10. the other person's giving or acceptance of gifts; or
 11. the other person's extension or acceptance of an invitation to go to a private residence, room, or location.
- (d) Consent is not voluntary if it is obtained by coercion. Nor is consent voluntary if it is obtained from a person who is incapacitated if one knows (or a reasonable person would know) that the other person is incapacitated. Because the incapacitation of another person may be difficult for one to discern, students are strongly encouraged to err on the side of caution (i.e., when in doubt, assume that the other person is incapacitated and therefore unable to give consent.)
- (e) Consent must be continual, which means that consent must exist from the beginning to the end of each sexual encounter and for each specific sexual act that occurs during a sexual encounter. A person has a right to change his/her mind; thus, consent to engage in a specific sexual act may be withdrawn by a person at any time. A withdrawal of consent is communicated through clear words and/or clear non-verbal actions that indicate that a person no longer agrees to engage in a specific sexual act. Once a person's withdrawal of consent has been communicated, the other person must cease the specific sexual act and must obtain consent before reinitiating the specific sexual act

or any other sexual act. Consent is automatically withdrawn when a person becomes incapacitated. Consent to one type of sexual contact or sexual intercourse (e.g., oral intercourse) does not constitute or imply consent for another type of sexual contact or sexual intercourse (e.g., vaginal intercourse), whether during a sexual encounter or during a previous sexual encounter. The University urges students to communicate with one another throughout a sexual encounter to ensure that any progression of sexual activity is done with consent.

- (13) The term “course of conduct” means two (2) or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about another person, or interferes with another person’s property.
- (14) The term “dating violence” means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim of the violence. The existence of such a relationship shall be determined based on the reporting party’s statement and with consideration of the following factors: (1) the length of the relationship; (2) the type of relationship; and (3) the frequency of interaction between the persons involved in the relationship. Dating violence includes, without limitation, sexual or physical abuse or the threat of such abuse.
- (15) The term “domestic violence” means a felony or misdemeanor crime of violence committed:
- (a) by a current or former spouse or intimate partner of the victim;
 - (b) by a person with whom the victim shares a child in common;
 - (c) by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner;
 - (d) by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred; or
 - (e) by any other person against an adult or youth victim who is protected from that person’s acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.
- (16) The term “good faith” means having a belief in the truth of information that a reasonable person in the same situation 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.
- (17) The term “incapacitated” or “incapacitation” means a temporary or permanent physical or mental state in which a person cannot make informed, rational judgments (e.g., judgments concerning sexual contact, sexual intercourse, or sexual exploitation) because: the person lacks the physical or mental capacity to understand the nature or consequences of their words and/or conduct; and/or the person is unable to physically or verbally communicate consent. Incapacitation can be voluntary or involuntary. Incapacitation is determined based on the totality of the circumstances. Incapacitation may result from: sleep; unconsciousness; intermittent consciousness; temporary or permanent physical or mental disability; involuntary physical restraint; or the influence of alcohol, drugs, or other substances, including, without limitation, substances used to facilitate sexual assault (e.g., Rohypnol, Ketamine, GHB, and Burundanga). Alcohol and drugs are common causes of incapacitation. When alcohol or drugs are involved, Incapacitation is a state beyond mere drunkenness or intoxication. The impact of alcohol and drugs varies from person to person; however, warning signs of incapacitation may include, without limitation: lack of control over physical movements (e.g., inability to dress/undress without assistance; inability to walk without assistance); lack of awareness of circumstances or surroundings; vomiting; unresponsiveness; and inability to communicate coherently. A person who is under the age of eighteen (18) (i.e., a minor) is incapable of giving consent; however, a person who is at least the age of thirteen (13) and less than the age of eighteen (18) is capable of giving consent to sexual

acts with another person who is less than four (4) years older than them.

- (18) The term “reasonable person” means a sober, objectively reasonable person in the same situation, and with the same sex, gender identity, and sexual orientation as the person whose words and/or conduct are being evaluated.
- (19) The term “relationship violence” means dating violence and/or domestic violence.
- (20) The term “retaliation” means an act (i) taken by a student (including an act taken through a third party) because of another person’s participation in a protected activity (ii) that would discourage a reasonable person from engaging in protected activity. Protected activity includes a person’s good faith: (i) opposition to conduct prohibited under the Standards of Conduct; (ii) report to the University about conduct prohibited under the Standards of Conduct to the University; (iii) participation (or reasonable expectation of participation) in any manner in an investigation, meeting, hearing, or interim measure; or (iv) exercise of rights or responsibilities under any provision of the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act. 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 an act taken against a person’s family, friends, advisors, and/or other persons reasonably expected to provide information in connection with a University investigation or hearing.
- (21) The term “sexual assault” means engaging in sexual contact or sexual intercourse with another person without the consent of that person.
- (22) The term “sexual contact” means the intentional touching of another person (including another person’s clothing) in a sexual manner with any part of one’s body or with any object. Sexual contact also means intentionally causing another person to touch themselves (including their clothing) in a sexual manner. Whether a touching was done in a sexual manner is determined from the perspective of a sober, objectively reasonable person in the same situation and with the same sex, gender identity, and sexual orientation as the person who was touched.
- (23) The term “sexual exploitation” means an act or attempted act by a person for the purpose of sexual arousal or gratification, financial gain, or other personal benefit through the abuse or exploitation of another person’s sexuality. Examples of sexual exploitation include, without limitation: observation of a person who is undressed or engaging in sexual contact or sexual intercourse, without the consent of all persons being observed (in a place where a person has a reasonable expectation of privacy); creation or distribution of images, photography, an audiotape, or a videotape of sexual contact, sexual intercourse, or a person’s intimate parts (i.e., genitalia, groin, breasts, buttocks) without the consent of all persons being recorded or photographed; prostituting another person; allowing others to observe, either in person or electronically, sexual contact or sexual intercourse without the consent of all persons involved in the sexual contact or sexual intercourse (in a place where a person has a reasonable expectation of privacy); and knowingly exposing another person to a sexually transmitted infection without informing the other person that one has a sexually transmitted infection.
- (24) The term “sexual harassment” means with respect to the conduct of a student, unwelcome conduct of a sexual nature that is so severe or 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 the term “sexual harassment” be construed to prohibit speech protected by the First Amendment to the United States Constitution (e.g., mere insulting or offensive speech). Sexual harassment may include, for example, unwelcome sexual advances, requests for sexual favors, and acts of sexual assault. The term “sexual harassment” also means, with respect to the conduct of a student-employee (when acting as a student-employee): unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when: submission to such conduct is made either explicitly or implicitly a term or condition of an individual’s participation in an educational program; submission to or rejection of such conduct by an individual is used as the basis for evaluation or advancement in an educational program; or such conduct has the purpose or effect of unreasonably interfering with an individual’s educational performance or

creates an intimidating, hostile or offensive educational environment. Sexual harassment is a form of sex discrimination. To determine whether conduct constitutes sexual harassment, consideration shall be given to the totality of the circumstances, including without limitation: the context in which the conduct and/or words occurred; and the frequency, nature, and severity of the conduct and/or words.

- (25) The term "sexual intercourse" means the penetration, no matter how slight, of the vagina or anus with any body part or object; or oral penetration by a sex organ of another person.
- (26) The term "sexual misconduct" means sexual harassment, sexual assault, and/or sexual exploitation.
- (27) The term "stalking" means engaging in a course of conduct directed at a specific person that would cause a reasonable person to: (1) fear for the person's safety or the safety of others; or (2) suffer substantial emotional distress. For the purposes of this definition, the term "reasonable person" means a reasonable person under similar circumstances and with similar identities to the victim.
- (28) The term "substantial emotional distress" means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

Authority: T.C.A. § 49-9-209(e) and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

Rule 1720-05-01-.04 Standards of Conduct is amended by deleting the language in its entirety and substituting the following language so that, as amended, the rule shall read:

1720-05-01-.04 Standards of Conduct. A student or student organization may be disciplined for the following types of misconduct:

- (1) Cheating, plagiarism, or any other act of academic dishonesty as described in Chapter 1720-05-01-.13.
- (2) Providing false information to a University official.
- (3) Falsifying, distorting, misrepresenting, or withholding information in connection with a University investigation or hearing.
- (4) Forging, altering, destroying, falsifying, or misusing records, identification, or documents.
- (5) Causing physical harm to any person (including oneself); endangering the health or safety of any person (including oneself); 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, which is defined as unwelcome conduct that is so severe or 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) Engaging in sexual misconduct, relationship violence, or stalking.
- (8) Invasion of another person's privacy when that person has a reasonable expectation of privacy, including, but not limited to, 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 unauthorized recordings by any means is also prohibited.

- (9) Theft, misappropriation, unauthorized possession, or unauthorized sale of private or public property, including but not limited to University-controlled property.
- (10) Vandalizing, destroying, damaging, engaging in conduct that reasonably could cause damage to, or misusing private or public property, including but not limited to University-controlled property.
- (11) Participating in hazing. "Hazing" is defined as 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 or safety of that student, or which induces or coerces a student to endanger his or her mental or physical health or safety. "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.
- (12) Engaging in disorderly conduct, which means: 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.
- (13) Engaging in lewd, indecent, or obscene conduct. "Lewd, indecent, or obscene" conduct includes, but is not limited to, public exposure of one's sexual organs, public urinating, and public sexual acts.
- (14) 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.
- (15) 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.
- (16) Possessing, using, or duplicating University keys, access cards, or identification cards without authorization; possessing, using, or entering University-controlled property without authorization.
- (17) Theft, misuse, or unauthorized use of information technology facilities, resources, or access codes, including, but not limited to: 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.
- (18) Possessing, using, storing, or manufacturing any weapon or any facsimile of a 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.
- (19) 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.
- (20) Consuming, manufacturing, possessing, distributing, dispensing, selling, or being under the influence of alcoholic beverages, if prohibited by federal, state, or local law.
- (21) Providing an alcoholic beverage to a person younger than twenty-one (21) years of age, unless permitted by law.

- (22) Using, manufacturing, possessing, distributing, selling, dispensing, or being under the influence of drugs or 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.
- (23) Failing to pay a University bill, account, or other University financial obligation.
- (24) 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.
- (25) Failing to appear at a University hearing, including, but not limited to, a hearing of a University judicial board, following a request to appear either as a party or as a witness.
- (26) Violating the terms of an interim suspension, a no-contact directive, or a disciplinary penalty imposed by the University.
- (27) 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. In no event shall this rule be construed to discipline a student for speech protected by the First Amendment to the United States Constitution.
- (28) Violating a University policy or rule, including but not limited to University policies or rules relating to facilities use, smoking, the acceptable use of information technology resources, research or service 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.
- (29) Committing an act that is prohibited by local, state, or federal law.
- (30) 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.
- (31) Engaging in retaliation.

Authority: T.C.A. § 49-9-209(e) and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

Rule 1720-05-01-.08 Hearing Procedures is amended by deleting the language in its entirety and substituting the following language so that, as amended, the rule shall read:

1720-05-01-.08 Hearing Procedures.

- (1) A student charged with violating the Standards of Conduct, Chapter 1720-05-01-.04, shall be provided written notice of:
 - (a) The substance of the charge(s) against him/her;
 - (b) The disciplinary action taken or proposed; and
 - (c) 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.
- (2) 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; or
 - (c) A hearing in accordance with the University's rules for conducting contested case proceedings under the Uniform Administrative Procedures Act ("UAPA"). 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 1720-01-3. 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(3) or Section .08(4).
- (3) 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.
- (4) 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.
 - (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 guilty or not guilty. If a guilty 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 guilty plea has been entered, evidence in mitigation of the alleged offense shall be presented only after the Board has determined the issue of innocence or guilt.
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 guilt 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(4)(e). The Disciplinary Hearing Board may consider evidence introduced by the alleged victim as part of the University's proof.
- (5) 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 misconduct, relationship violence, and stalking in accordance with the University's Policy on Sexual Misconduct, Relationship Violence, and Stalking. In a case involving an allegation of sexual misconduct, relationship violence, or stalking, the accused student/respondent and the alleged victim/complainant shall have the rights outlined in the University's Policy on Sexual Misconduct, Relationship Violence, and Stalking.
- (6) For purposes of this rule, the term "student" shall mean a student or a student organization.

Authority: T.C.A. § 49-9-209(e) and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

* If a roll-call vote was necessary, the vote by the Agency on these rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Governor Bill Haslam				X	
Commissioner Julius Johnson	X				
Commissioner Candice McQueen				X	
Dr. Joe DiPietro	X				
Dr. Russ Deaton (non-voting)					
Charles C. Anderson, Jr.	X				
Jalen Blue	X				
Shannon Brown	X				
George E. Cates	X				
Dr. Brian Donavant (non-voting)					
Spruell Driver, Jr.	X				
Dr. William E. Evans				X	
John N. Foy	X				
Crawford Gallimore				X	
Dr. David Golden	X				
Vicky B. Gregg	X				
Raja J. Jubran	X				
Brad A. Lampley	X				
James L. Murphy, III	X				
Sharon J. Miller Pryse	X				
Miranda N. Rutan (non-voting)					
Rhedona Rose	X				
Julia T. Wells	X				
Charles E. Wharton	X				
Tommy G. Whittaker	X				

I certify that this is an accurate and complete copy of an emergency rule(s), lawfully promulgated and adopted.

Date: 08/14/2015

Signature: _____

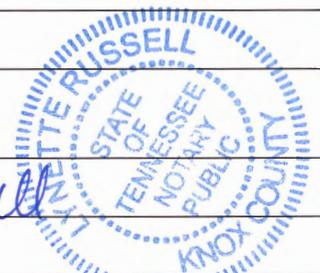
Name of Officer: Matthew Scoggins

Title of Officer: Deputy General Counsel

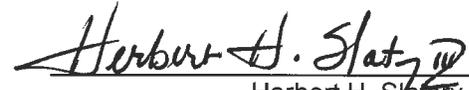
Subscribed and sworn to before me on: 8-14-15

Notary Public Signature: _____

My commission expires on: 12-4-18



All emergency rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.


Herbert H. Slatery III
Attorney General and Reporter
8/20/2015
Date

Department of State Use Only

Filed with the Department of State on: 8/27/15
Effective for: 180 *days
Effective through: 2/23/16

* Emergency rule(s) may be effective for up to 180 days from the date of filing.


Tre Hargett
Secretary of State

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PUBLICATIONS

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 “any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments.” (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

The University of Tennessee anticipates that this rule change will have minimal to no impact on local governments.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

The Statement of Necessity describes changes being made to comply with Title IX and the Clery Act (as amended by VAWA). Those changes relate to student conduct involving sexual misconduct (e.g., sexual assault), domestic violence, dating violence, and stalking.

A proposed revision to the definition of the term, "weapon," Chapter 1720-05-01-.02(9) addresses concerns expressed by some members of the Tennessee General Assembly's Government Operations Committee about the potential overbreadth of the former definition.

A proposed revision to the definition of the term, "weapon," Chapter 1720-05-01-.02(10) addresses concerns expressed by the Tennessee Attorney General's Office.

A proposed revision to the standards of conduct, Chapter 1720-05-01-.04(5), addresses a concern expressed by the Tennessee Attorney General's Office relating to *Elonis v. United States*, 135 S.Ct. 2011 (2015).

To address confusion expressed by some students, proposed revisions to the standards of conduct separate "disorderly" conduct from "lewd, indecent, or obscene conduct," but otherwise the language of the standards does not change.

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

See Statement of Necessity.

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

Students and faculty of the University of Tennessee are most directly affected by this rule. Although no rulemaking hearing was held, the University's administration solicited comments from student and faculty leaders and received favorable comments concerning the rule. In addition, the student and faculty members of the UT Board of Trustees voted to approve the rule.

- (D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

None.

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

Minimal.

- (F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Matthew Scoggins
Deputy General Counsel
University of Tennessee

- (G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Matthew Scoggins
Deputy General Counsel
University of Tennessee

- (H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Matthew Scoggins
Deputy General Counsel
University of Tennessee
719 Andy Holt Tower
Knoxville, TN 37996-0170
scoggins@tennessee.edu
865-974-3245

- (I) Any additional information relevant to the rule proposed for continuation that the committee requests.

None.

**RULES
OF
THE UNIVERSITY OF TENNESSEE
(MARTIN)**

**CHAPTER 1720-05-01
STUDENT RIGHTS AND RESPONSIBILITIES**

1720-05-01-.01 INTRODUCTION.

- (1) Students at the University of Tennessee at Martin are members of both the University community and the larger community of which the University is a part. Accordingly, students are responsible for conducting themselves in a lawful manner and in compliance with University rules and policies. The University has established the following rules in order to advance the mission of the University by maintaining a safe and secure learning environment; protecting the rights and privileges of all members of the University community; providing a basis for orderly conduct of the affairs of the University; promoting a positive relationship between the University and its surrounding community; preserving institutional integrity and property; encouraging students to engage in conduct that brings credit to themselves and the University; and ensuring that each student who matriculates at the University graduates ready to contribute to society as an ethical and law-abiding citizen.
- (2) The University is committed to respecting students' constitutional rights. Nothing in this chapter is intended or shall be interpreted to restrict students' constitutional rights, including, but not limited to, rights of freedom of speech and assembly.
- (3) Students are responsible for being fully acquainted and for complying with the University catalog, handbook, and other rules and policies relating to students. Failure or refusal to comply with the rules and policies established by the University may subject a student to disciplinary action up to and including permanent dismissal from the University.

1720-05-01-.02 DEFINITIONS.

- (1) The term "University" means the University of Tennessee at Martin.
- (2) The term "student" means a person admitted, enrolled or registered for study at the University of Tennessee, either full-time or part-time, pursuing undergraduate, graduate, or professional studies, as well as non-degree students. Persons not officially registered or enrolled for a particular term but who have a continuing relationship with the University also are considered students for purposes of these rules.

- (3) The term “student organization” means 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.
- (4) The term “University-controlled property” means all land, buildings, facilities, grounds, structures, or any other property owned, leased, used, maintained, or operated by the University. For purposes of this rule, University-controlled property includes all streets, alleys, sidewalks, and public ways abutting such property. University-controlled property also includes computers and network systems owned, maintained, or controlled by the University or funded by the University.
- (5) The term “University-affiliated activity” means any activity on or off University-controlled property that is initiated, aided, authorized, sponsored, or supervised by the University.
- (6) The term “University official” means an employee of the University, including faculty members and staff, or for purposes of this rule a University-recognized volunteer. Student employees may be considered University officials when acting in the performance of their duties (e.g., event staff, resident assistants, and teaching assistants).
- (7) The term “member of the University community” means any person who is a student, University official, campus visitor, or participant in a University-sponsored or University-affiliated activity.
- (8) The term “possession” means 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) The term “weapon” means 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, but not limited to, firearms (loaded and unloaded, real firearms and devices that appear to a law enforcement officer to be real firearms and replicas), ammunition, electronic control devices (such as tasers and stun guns), devices designed to discharge an object (such as bb guns, air guns, pellet guns, potato guns, and slingshots, but not water guns), explosives, dangerous chemicals (such as 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 ~~three~~four (43) 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.
- (10) The term “notice” means notice given in writing and transmitted by United

States mail, courier service, and/or hand delivery to the address the University's Registrar has on file for the student; and/or by e-mail to the 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.~~delivered by regular mail, courier service, or hand delivery to the address the University has on file for the student or student organization, or by e-mail to the student's or student organization's University-provided e-mail account.~~

(11) The term "coercion" means words and/or conduct that, viewed from the perspective of a reasonable person, substantially impair(s) a person's ability to voluntarily choose whether to engage in a particular sexual act (e.g., sexual contact or sexual intercourse). Coercion is something more than mere seduction or persuasion. Coercion includes, without limitation: physical force; and words and/or conduct that would cause a reasonable person to fear imminent: harm to the person's health, safety, or property or that of a third person; threat of the loss or impairment of a job benefit; threat of the loss or impairment of an academic benefit; kidnapping of the person or a third person; or disclosure of sensitive personal information (e.g., disclosure of a person's sexual orientation, gender identity, or gender expression).

(12) The term "consent" means an affirmative and voluntary agreement by a person to engage in a specific sexual act. Consent must be obtained, and the responsibility for obtaining consent rests with the individual who voluntarily and physically initiates a specific sexual act, even if the other person initiated the sexual encounter.

(a) One's own use of alcohol, drugs, or other substances does not diminish one's responsibility to obtain Consent from the other person. Moreover, another person's use of alcohol, drugs, or other substances does not diminish one's responsibility to obtain consent from that person.

(b) The term "affirmative," as used in the definition of consent, means that consent is communicated only through words and/or non-verbal actions that convey a clear agreement to engage in a specific sexual act. Whether person has communicated an agreement to engage in a specific sexual act generally is evaluated from the perspective of what a reasonable person who perceived the individual's words and/or non-verbal actions would have understood; however, in the context of a long-term relationship between persons that has involved sexual activity and a pattern of communicating consent, whether consent has been communicated may be evaluated based on a subjective standard (i.e., what did the specific person who initiated the specific sexual act conclude?). A verbal "no" (or words equivalent to "no") or the nonverbal communication of "no," even

if it sounds or appears insincere or indecisive, always means that consent has not been communicated, or if previously communicated has been withdrawn. The absence of a verbal "no" or the absence of a nonverbal communication of "no" does not necessarily mean that consent has been communicated. Because interpreting non-verbal actions may lead to misunderstanding and a violation of this policy, students are strongly encouraged to err on the side of caution and not rely solely on the non-verbal actions of another person in concluding that the other person has communicated consent. The University urges students to communicate with one another before engaging in a sexual act to ensure that they both wish to engage in the same sexual act.

(c) Consent cannot be obtained by or inferred from:

1. silence that is not accompanied by non-verbal actions conveying a clear agreement to engage in a particular sexual act;
2. consent communicated by the other person on a previous occasion;
3. consent communicated to another person;
4. the other person's failure to resist physical force (however, for purposes of this policy, the other person's resistance to physical force will be viewed as a clear demonstration that the person has not communicated consent);
5. the sexual arousal of the other person;
6. a current or previous dating, romantic, intimate, or sexual relationship with the other person;
7. currently or previously cohabitating with the other person;
8. the other person's attire;
9. the other person's reputation;
10. the other person's giving or acceptance of gifts; or
11. the other person's extension or acceptance of an invitation to go to a private residence, room, or location.

(d) Consent is not voluntary if it is obtained by coercion. Nor is consent voluntary if it is obtained from a person who is incapacitated if one knows (or a reasonable person would know) that the other person is incapacitated. Because the incapacitation of another person may be

difficult for one to discern, students are strongly encouraged to err on the side of caution (i.e., when in doubt, assume that the other person is incapacitated and therefore unable to give consent.)

(e) Consent must be continual, which means that consent must exist from the beginning to the end of each sexual encounter and for each specific sexual act that occurs during a sexual encounter. A person has a right to change his/her mind; thus, consent to engage in a specific sexual act may be withdrawn by a person at any time. A withdrawal of consent is communicated through clear words and/or clear non-verbal actions that indicate that a person no longer agrees to engage in a specific sexual act. Once a person's withdrawal of consent has been communicated, the other person must cease the specific sexual act and must obtain consent before reinitiating the specific sexual act or any other sexual act. Consent is automatically withdrawn when a person becomes incapacitated. Consent to one type of sexual contact or sexual intercourse (e.g., oral intercourse) does not constitute or imply consent for another type of sexual contact or sexual intercourse (e.g., vaginal intercourse), whether during a sexual encounter or during a previous sexual encounter. The University urges students to communicate with one another throughout a sexual encounter to ensure that any progression of sexual activity is done with consent.

(13) The term "course of conduct" means two (2) or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about another person, or interferes with another person's property.

(14) The term "dating violence" means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim of the violence. The existence of such a relationship shall be determined based on the reporting party's statement and with consideration of the following factors: (1) the length of the relationship; (2) the type of relationship; and (3) the frequency of interaction between the persons involved in the relationship. Dating violence includes, without limitation, sexual or physical abuse or the threat of such abuse.

(15) The term "domestic violence" means a felony or misdemeanor crime of violence committed:

(a) by a current or former spouse or intimate partner of the victim;

(b) by a person with whom the victim shares a child in common;

(c) by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner;

- (d) by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred; or
- (e) by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.
- (16) The term "good faith" means having a belief in the truth of information that a reasonable person in the same situation 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.
- (17) The term "incapacitated" or "incapacitation" means a temporary or permanent physical or mental state in which a person cannot make informed, rational judgments (e.g., judgments concerning sexual contact, sexual intercourse, or sexual exploitation) because: the person lacks the physical or mental capacity to understand the nature or consequences of their words and/or conduct; and/or the person is unable to physically or verbally communicate consent. Incapacitation can be voluntary or involuntary. Incapacitation is determined based on the totality of the circumstances. Incapacitation may result from: sleep; unconsciousness; intermittent consciousness; temporary or permanent physical or mental disability; involuntary physical restraint; or the influence of alcohol, drugs, or other substances, including, without limitation, substances used to facilitate sexual assault (e.g., Rohypnol, Ketamine, GHB, and Burundanga). Alcohol and drugs are common causes of incapacitation. When alcohol or drugs are involved, Incapacitation is a state beyond mere drunkenness or intoxication. The impact of alcohol and drugs varies from person to person; however, warning signs of incapacitation may include, without limitation: lack of control over physical movements (e.g., inability to dress/undress without assistance; inability to walk without assistance); lack of awareness of circumstances or surroundings; vomiting; unresponsiveness; and inability to communicate coherently. A person who is under the age of eighteen (18) (i.e., a minor) is incapable of giving consent; however, a person who is at least the age of thirteen (13) and less than the age of eighteen (18) is capable of giving consent to sexual acts with another person who is less than four (4) years older than them.
- (18) The term "reasonable person" means a sober, objectively reasonable person in the same situation, and with the same sex, gender identity, and sexual orientation as the person whose words and/or conduct are being evaluated.
- (19) The term "relationship violence" means dating violence and/or domestic violence.

- (20) The term "retaliation" means an act (i) taken by a student (including an act taken through a third party) because of another person's participation in a protected activity (ii) that would discourage a reasonable person from engaging in protected activity. Protected activity includes a person's good faith: (i) opposition to conduct prohibited under the Standards of Conduct; (ii) report to the University about conduct prohibited under the Standards of Conduct to the University; (iii) participation (or reasonable expectation of participation) in any manner in an investigation, meeting, hearing, or interim measure; or (iv) exercise of rights or responsibilities under any provision of the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act. 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 an act taken against a person's family, friends, advisors, and/or other persons reasonably expected to provide information in connection with a University investigation or hearing.
- (21) The term "sexual assault" means engaging in sexual contact or sexual intercourse with another person without the consent of that person.
- (22) The term "sexual contact" means the intentional touching of another person (including another person's clothing) in a sexual manner with any part of one's body or with any object. Sexual contact also means intentionally causing another person to touch themselves (including their clothing) in a sexual manner. Whether a touching was done in a sexual manner is determined from the perspective of a sober, objectively reasonable person in the same situation and with the same sex, gender identity, and sexual orientation as the person who was touched.
- (23) The term "sexual exploitation" means an act or attempted act by a person for the purpose of sexual arousal or gratification, financial gain, or other personal benefit through the abuse or exploitation of another person's sexuality. Examples of sexual exploitation include, without limitation: observation of a person who is undressed or engaging in sexual contact or sexual intercourse, without the consent of all persons being observed (in a place where a person has a reasonable expectation of privacy); creation or distribution of images, photography, an audiotape, or a videotape of sexual contact, sexual intercourse, or a person's intimate parts (i.e., genitalia, groin, breasts, buttocks) without the consent of all persons being recorded or photographed; prostituting another person; allowing others to observe, either in person or electronically, sexual contact or sexual intercourse without the consent of all persons involved in the sexual contact or sexual intercourse (in a place where a person has a reasonable expectation of privacy); and knowingly exposing another person to a sexually transmitted infection without informing the other person that one has a sexually transmitted infection.
- (24) The term "sexual harassment" means with respect to the conduct of a student, unwelcome conduct of a sexual nature that is so severe or 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 the term "sexual harassment" be construed to prohibit speech protected by the First Amendment to the United States Constitution (e.g., mere insulting or offensive speech). Sexual harassment may include, for example, unwelcome sexual advances, requests for sexual favors, and acts of sexual assault. The term "sexual harassment" also means, with respect to the conduct of a student-employee (when acting as a student-employee): unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when: submission to such conduct is made either explicitly or implicitly a term or condition of an individual's participation in an educational program; submission to or rejection of such conduct by an individual is used as the basis for evaluation or advancement in an educational program; or such conduct has the purpose or effect of unreasonably interfering with an individual's educational performance or creates an intimidating, hostile or offensive educational environment. Sexual harassment is a form of sex discrimination. To determine whether conduct constitutes sexual harassment, consideration shall be given to the totality of the circumstances, including without limitation: the context in which the conduct and/or words occurred; and the frequency, nature, and severity of the conduct and/or words.

- (25) The term "sexual intercourse" means the penetration, no matter how slight, of the vagina or anus with any body part or object; or oral penetration by a sex organ of another person.
- (26) The term "sexual misconduct" means sexual harassment, sexual assault, and/or sexual exploitation.
- (27) The term "stalking" means engaging in a course of conduct directed at a specific person that would cause a reasonable person to: (1) fear for the person's safety or the safety of others; or (2) suffer substantial emotional distress. For the purposes of this definition, the term "reasonable person" means a reasonable person under similar circumstances and with similar identities to the victim.
- (28) The term "substantial emotional distress" means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

1720-05-01-.03 JURISDICTION.

- (1) The Standards of Conduct, Chapter 1720-05-01-.04, apply to conduct that occurs on University-controlled property.
- (2) The University also has the discretion to discipline a student for an act in violation of the Standards of Conduct that occurs off University-controlled property if the conduct adversely affects the interests of the University,

including, but not limited to, conduct which:

- (a) Occurs in connection with a University-affiliated activity, including, but not limited to, an overseas study program or a clinical, field, internship, or in-service experience;
 - (b) Involves another member of the University community; or
 - (c) Threatens, or indicates that the student may pose a threat to, the health or safety of him/herself or others or the security of any person's property, including, but not limited to, alcohol-related offenses, drug-related offenses, arson, battery, fraud, hazing, participation in group violence, rape, sexual assault or misconduct, stalking, and theft.
- (3) The Standards of Conduct have been adopted in furtherance of the University's interests and serve to supplement, rather than substitute for, the enforcement of the civil and criminal law. Accordingly, University disciplinary action may be instituted against a student charged with conduct that potentially violates both the criminal law and the Standards of Conduct without regard to the pendency of criminal charges or civil litigation. At the discretion of the Vice Chancellor for Student Affairs, or his/her designee, disciplinary action relating to a violation of the Standards of Conduct may be carried out prior to, simultaneously with, or following criminal proceedings. Students accused of violating the Standards of Conduct may not challenge the University disciplinary proceedings on the grounds that criminal charges, civil litigation, or other University proceedings regarding the same incident are pending or have been terminated, dismissed, reduced, or not yet adjudicated.
- (4) Each student shall be responsible for his/her conduct from the time of application for admission through the actual awarding of a degree, even though conduct may occur before classes begin or after classes end, as well as during the academic year and during periods between terms of actual enrollment (and even if conduct is not discovered by the University until after a degree is awarded). Should a student withdraw from the University with disciplinary charges pending, the student's academic record and/or ability to register for classes may be encumbered by the appropriate University office.
- (5) Graduate or professional programs within the University may initiate charges against students for alleged violations of professional standards or ethics as a separate issue or as an extension of alleged acts of academic dishonesty or other violations of the Standards of Conduct.

1720-05-01-.04 STANDARDS OF CONDUCT. A student or student organization may be disciplined for the following types of misconduct:

- (1) Cheating, plagiarism, or any other act of academic dishonesty as described in Chapter 1720-05-01-.13.

- (2) Providing false information to a University official.
- (3) Falsifying, distorting, misrepresenting, or withholding information in connection with a University investigation or hearing.
- (4) Forging, altering, destroying, falsifying, or misusing records, identification, or documents, whether in print or electronic form.
- (5) Causing physical harm to any person (including oneself); endangering the health or safety of any person (including oneself); engaging in conduct that causes a reasonable person to fear harm to his/her health or safety; or making an oral or written statement (~~including electronically~~) 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, ~~although the speaker need not mean to carry out the act of unlawful violence in order to constitute a violation of this rule.~~
- (6) Harassment, which is defined as unwelcome conduct that is so severe or 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) Engaging in sexual misconduct, relationship violence, or stalking. Sexual assault or misconduct. ~~“Sexual assault” is defined as any sexual act or attempt to engage in any sexual act with another person without the consent of the other person, or in circumstances in which the person is unable to give consent due to age, disability, or an alcohol/chemical or other impairment. “Sexual misconduct” is defined as any intimate touching of another person, or forcing a person to engage in intimate touching of another, without the consent of the other person, or in circumstances in which the person is unable to give consent due to age, disability, or an alcohol/chemical or other impairment. It is the responsibility of the person initiating sexual activity to ensure the other person is capable of consenting to that activity. Consent is given by an affirmative verbal response or acts that are unmistakable in their meaning. Consent to one form of sexual activity does not mean consent is given to another type of sexual activity.~~
- (8) Invasion of another person’s privacy when that person has a reasonable expectation of privacy, including, but not limited to, 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 unauthorized recordings by any

means is also prohibited.

- (9) Theft, misappropriation, unauthorized possession, or unauthorized sale of private or public property, including but not limited to University-controlled property.
- (10) Vandalizing, destroying, damaging, engaging in conduct that reasonably could cause damage to, or misusing private or public property, including but not limited to University-controlled property.
- (11) Participating in hazing. "Hazing" is defined as 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 or safety of that student, or which induces or coerces a student to endanger his or her mental or physical health or safety. "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.

(12) Engaging in disorderly conduct, which means: 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)(13)~~ Engaging in ~~disorderly,~~ lewd, indecent, or obscene conduct. ~~"Disorderly" conduct means fighting or other physically violent or 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.~~ "Lewd, indecent, or obscene" conduct includes, but is not limited to, public exposure of one's sexual organs, public urinating, and public sexual acts.

~~(13)(14)~~ Engaging in speech, either orally or in writing, which is directed to inciting or producing imminent lawless action and is likely to incite or produce such action.

~~(14)(15)~~ 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)(16)~~ Possessing, using, or duplicating University keys, access cards, or identification cards without authorization; possessing, using, or entering University-controlled property without authorization.

~~(16)~~(17) Theft, misuse, or unauthorized use of information technology facilities, resources, or access codes, including, but not limited to: 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)~~(18) Possessing, using, storing, or manufacturing any weapon or any facsimile of a weapon on University-controlled property or in connection with a University-affiliated activity, unless authorized in writing by the Department of Public Safety.

~~(18)~~(19) 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.

~~(19)~~(20) Consuming, manufacturing, possessing, distributing, dispensing, selling, or being under the influence of alcoholic beverages, if prohibited by federal, state, or local law.

~~(20)~~(21) Providing an alcoholic beverage to a person younger than twenty-one (21) years of age, unless permitted by law.

~~(21)~~(22) Using, manufacturing, possessing, distributing, selling, dispensing, or being under the influence of drugs or 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)~~(23) Failing to pay a University bill, account, or other University financial obligation.

~~(23)~~(24) 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)~~(25) Failing to appear at a University hearing, including, but not limited to, a hearing of a University judicial board, following a request to appear either as a

party or as a witness.

~~(25)~~(26) _____ Violating the terms of an interim suspension, a no-contact directive, or a disciplinary penalty imposed by the University.

~~(26)~~(27) _____ 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)~~(28) _____ Violating a University policy or rule, including but not limited to University policies or rules relating to facilities use, smoking, the acceptable use of information technology resources, research or service 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)~~(29) _____ Committing an act that is prohibited by local, state, or federal law.

(30) _____ 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.

~~(29)~~(31) _____ Engaging in retaliation.

1720-05-01-.05 PENALTIES.

- (1) Disciplinary penalties are primarily intended to educate students and student organizations about appropriate behavior, encourage students and student organizations to take responsibility for misconduct, promote the personal and professional development of students, discourage other students and student organizations from violating the Standards of Conduct, and protect members of the University community. The penalties imposed should be appropriate for the particular case based on the gravity of the offense (including without limitation how the violation affected or reasonably could have affected other members of the University community). Consideration may also be given to the student's or student organization's conduct record; the student's or student organization's responsiveness to the conduct process; whether the student acted in self-defense, and, if so, whether the amount of force used was reasonable under the circumstances; student academic classification; and other aggravating or mitigating factors.
- (2) The following penalties may be imposed on any student found to have violated the Standards of Conduct:

- (a) **Warning.** A warning is a notice that the student is violating or has violated the Standards of Conduct. A disciplinary warning is used for minor infractions and consists of a restatement of the Standard(s) of Conduct violated with an official warning concerning future behavior.
- (b) **Loss of Privilege.** A loss of privilege is intended to serve as a reminder of the Standards of Conduct and is for a specific period of time. Privileges that may be lost include, but are not limited to, scholarships, stipends, participation in extracurricular activities (e.g. intramurals), housing privileges, participation in social activities, and use of certain University-controlled property (e.g., information technology resources).
- (c) **Education.** Students may be required to attend classes, at their own expense, dealing with issues such as the consequences of alcohol or drug use, civility, ethics, or other topics as deemed appropriate by the Vice Chancellor for Student Affairs or his/her designee.
- (d) **Restitution.** Restitution may be required in situations that involve destruction, damage, or loss of property, or unreimbursed medical expenses resulting from physical injury. Restitution may take the form of a monetary payment or appropriate service to repair or otherwise compensate for the destruction, damage, or loss.
- (e) **Disciplinary Probation.** Disciplinary probation permits a student to remain at the University on probationary status but with the understanding that a future violation of the Standards of Conduct may result in suspension. Conditions of probation include loss of eligibility to join a student organization and to serve as an officer in a student organization. Other conditions are specific to the individual case and may include ineligibility to participate in certain student activities. Probation may be for a definite or indefinite period.
- (f) **Suspension for a Specific Period of Time.** Suspension for a specific period of time means that the student is withdrawn from the University and is not eligible to apply for readmission for a designated period of time. Usually, the designated period of time does not exceed one (1) calendar year. Persons suspended from the University may not return to the campus for the duration of their suspension, except to conduct official business with an administrative officer or faculty member. Upon return to the University following a suspension for a specific period of time, the student shall be placed on indefinite disciplinary probation.
- (g) **Indefinite Suspension.** Indefinite suspension is imposed in cases of serious or repeated misconduct or in cases in which the prognosis for rehabilitation is uncertain. Indefinite suspension means that the student is withdrawn from the University for an unspecified period of time but

typically for a minimum of one (1) calendar year from the effective date of the indefinite suspension. A student who receives the penalty of indefinite suspension is not eligible to apply for readmission until the student successfully petitions the University Council to lift the suspension. Upon return to the University following an indefinite suspension, the student shall be placed on indefinite disciplinary probation.

- (h) **Permanent Dismissal.** Permanent dismissal means that a student is permanently barred from matriculating as a student on the Martin campus. This penalty is used when the violation of one (1) or more Standards of Conduct is deemed so serious as to warrant total and permanent disassociation from the University community without the possibility of re-enrollment; or when, by his/her repeated violation of the Standards of Conduct, a student exhibits blatant disregard for the health and safety of other members of the University community or the University's right to establish rules of conduct.
 - (i) **Revocation of Degree.** Revocation of a degree means revoking a degree already awarded to a student by the University. Revocation of a degree shall be approved by the University of Tennessee Board of Trustees.
- (3) A disciplinary hold may be placed on a student's account until the completion of the student disciplinary process and/or until the student satisfies the terms and conditions of any penalties imposed. A student who, at the time of commencement, is subject to a continuing disciplinary penalty or an unresolved disciplinary charge shall not be awarded a degree before the conclusion of all penalties and/or resolution of all disciplinary charges.
- (4) The following penalties may be imposed on a student organization found to have violated the Standards of Conduct:
- (a) **Warning.** A warning is a notice that the student organization is violating or has violated the Standards of Conduct. A disciplinary warning is used for minor infractions and consists of a restatement of the Standard(s) of Conduct violated with an official warning concerning future behavior.
 - (b) **Loss of Privilege.** A loss of privilege is intended to serve as a reminder of the Standards of Conduct and is for a specific period of time. Examples of privileges that may be lost include participating in extracurricular activities (e.g., intramurals), housing privileges, participating in social activities, and using certain University-controlled property.
 - (c) **Education.** Student organizations and/or their representatives may be required to attend classes, at their own expense, dealing with issues such as the consequences of alcohol or drug use, civility, ethics, or other topics as deemed appropriate by the Vice Chancellor for Student Affairs or

his/her designee.

- (d) Restitution. Restitution may be required in situations that involve destruction, damage, or loss of property, or unreimbursed medical expenses resulting from physical injury. Restitution may take the form of a monetary payment or appropriate service to repair or otherwise compensate for the destruction, damage, or loss.
 - (e) Social Probation. This penalty prohibits a student organization from sponsoring or participating in specified social activities. While on social probation, a student organization may not host social events (e.g., mixers, date parties, formals, and band parties) or participate in University-affiliated activities (e.g., Homecoming). Any exceptions to social probation must be approved, in advance, by the Vice Chancellor for Student Affairs or his/her designee.
 - (f) Disciplinary Probation. Disciplinary probation means that a student organization is permitted to retain University registration on a probationary status. Violation of the Standards of Conduct during the period of disciplinary probation may result in more serious penalties, including revocation of University registration.
 - (g) Revocation of University Registration. In cases of serious misconduct, a student organization's University registration may be revoked.
- (5) More than one (1) of the penalties listed above may be imposed for any single violation of the Standards of Conduct. Penalties may be applied retroactively to the date of the offense.
 - (6) Intoxication or impairment because of alcohol, drugs, chemicals, or other substances does not diminish or excuse a violation of the Standards of Conduct.
 - (7) Except for an interim suspension, disciplinary penalties shall not become effective until after opportunities for appeal have been exhausted. Penalties may be applied retroactively to the date of the offense. Coursework performed while disciplinary charges are pending or disciplinary proceedings are underway shall be considered conditional. Coursework may be affected or disregarded based on a final finding of misconduct or the penalty imposed, which may result in loss of course credit, a loss of tuition and/or fees, a delay in the awarding of a degree, or revocation of a degree that was awarded prior to a final decision in the disciplinary proceeding.

1720-05-01-.06 NO CONTACT DIRECTIVE. In cases involving allegations of assault, injury, sexual abuse, harassment, or in cases where there is reason to believe continued contact between a student/student organization and specific persons, including complainants and witnesses, may interfere with those persons' security, safety or ability to participate effectively in work or studies, the Vice Chancellor for Student Affairs, or his/her designee, may require

that the student/student organization not have verbal, physical, or written contact with specific persons for a definite or indefinite period of time. The student/student organization will receive written or electronic notice of the no contact directive. Any student, faculty or staff member or other person with a reasonable justification may request that a no contact directive be issued to a student/student organization. In addition to an internal University no contact directive, complainants are advised that other similar options exist and can be obtained from law enforcement and civil and criminal courts.

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 of Tennessee, 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: (i) the reliability of the information concerning the student's conduct; and (ii) 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 appropriate by the faculty member involved.

1720-05-01-.08 HEARING PROCEDURES.

- (1) A student charged with violating the Standards of Conduct, Chapter 1720-05-01-.04, shall be provided written notice of:
 - (a) The substance of the charge(s) against him/her;
 - (b) The disciplinary action taken or proposed; and
 - (c) 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.
- (2) 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; or
 - (c) A hearing in accordance with the [University's rules for conducting contested case provisions-proceedings under of the Tennessee](#)-Uniform Administrative Procedures Act ("TUAPA"). 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 TUAPA. The University's procedures for conducting contested case hearings under the TUAPA are contained in Chapter 1720-01-05, and the University's rules concerning waivers of contested case [hearings proceedings](#) are contained in Chapter 1720-01-3. Disciplinary hearings will be conducted in accordance with the University's procedures for conducting contested case [hearings-proceedings](#) under the TUAPA unless the student waives those procedures in writing and elects to have his or her case [disposed-of-resolved](#) in accordance with ~~the University procedures established by these rules~~[Section .08\(3\) or Section .08\(4\)](#).
- (3) 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 TUAPA, 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.

(4) 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 TUAPA 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.
- (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 guilty or not guilty. If a guilty 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 guilty plea has been entered, evidence in mitigation of the alleged offense shall be presented only after the Board has determined the issue of innocence or guilt.
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 guilt 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(4)(e). The Disciplinary Hearing Board may consider evidence introduced by the alleged victim as part of the University's proof.

~~(e) In cases involving a complaint of sexual assault or misconduct, the alleged victim shall have the right to:~~

- ~~1. Notice concerning the process by which the University will handle the complaint and an opportunity to ask questions about the process;~~
- ~~2. A prompt, thorough, and impartial investigation of the complaint;~~
- ~~3. The same opportunity as the accused student to present his/her explanation of the facts during the University's investigation;~~
- ~~4. Have the investigation of the complaint concluded within sixty (60) days of the University's receipt of a complaint, unless circumstances make it impracticable for the University to complete its investigation within that timeframe;~~
- ~~5. Notice of the outcome of the University's investigation;~~
- ~~6. Have a disciplinary hearing conducted by the Disciplinary Hearing Board within thirty (30) days of a University charge that the accused student committed sexual assault or misconduct, unless the accused student chooses an administrative hearing under Chapter 1720-05-01-.08(3) or the circumstances make it impracticable for the University to conduct a hearing within that timeframe;~~
- ~~7. Notice of the date, time, and location of the hearing before the Disciplinary Hearing Board, the right to have the hearing closed~~

~~to the public, and the right to request rescheduling of the hearing for good cause;~~

- ~~8. The same access as the accused student to any information or documents that will be used by the Student Conduct Officer during the hearing before the Disciplinary Hearing Board, unless prohibited by law;~~
- ~~9. Challenge the seating of any Disciplinary Hearing Board member for good cause, which will be determined at the discretion of the Vice Chancellor for Student Affairs;~~
- ~~10. Be accompanied by an advisor of his/her choosing during the University's investigation or a hearing before the Disciplinary Hearing Board, but the advisor shall not be permitted to speak for the victim during a hearing;~~
- ~~11. The same opportunity as the accused student to be present during a hearing before the Disciplinary Hearing Board, present witnesses and other evidence, challenge the admissibility of evidence, and cross-examine adverse witnesses during a hearing before the Disciplinary Hearing Board;~~
- ~~12. Testify or remain silent at his/her option; however, choosing to remain silent may result in the University dismissing the charges against the accused student or the Disciplinary Hearing Board finding that there is insufficient evidence to find the accused student guilty of the charges against him/her;~~
- ~~13. Not to be questioned directly by the accused student during the hearing before the Disciplinary Hearing Board;~~
- ~~14. Submit a written impact statement to the Disciplinary Hearing Board or Student Conduct Officer for consideration during the sanctioning phase of an administrative or disciplinary hearing, if the accused student is found guilty of the charges against him/her;~~
- ~~15. Notice of the decision of the Student Conduct Officer or Disciplinary Hearing Board within three (3) business days of an administrative or disciplinary hearing; and~~
- ~~16. Appeal the decision of the Student Conduct Officer, following an administrative hearing, or the Disciplinary Hearing Board to the Vice Chancellor for Student Development.~~

(5) 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 misconduct, relationship violence, and stalking in accordance with the University's Policy on Sexual Misconduct, Relationship Violence, and Stalking. In a case involving an allegation of sexual misconduct, relationship violence, or stalking, the accused student/respondent and the alleged victim/complainant shall have the rights outlined in the University's Policy on Sexual Misconduct, Relationship Violence, and Stalking.

(5)(6) For purposes of this rule, the term "student" shall mean a student or a student organization.

1720-05-01-.09 APPEALS.

- (1) Appeal. 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 seven (7) calendar days of written notice of the decision of the Disciplinary Hearing Board or Student Conduct Officer. If the seventh day falls on a weekend or holiday, the time is extended to the next regular workday.
 - (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.
- (2) The Vice Chancellor for Student Affairs may:
 - (a) Affirm the decision of the Disciplinary Hearing Board or Student Conduct Officer;
 - (b) Amend the decision of the Disciplinary Hearing Board or Student Conduct Officer;

- (c) Return the case to the Disciplinary Hearing Board or Student Conduct Officer with instructions for reconsideration of the case; or
 - (d) Overturn the decision of the Disciplinary Hearing Board.
- (3) The decision of any board or administrative officer of the University of Tennessee at Martin is subject to review by the Chancellor.

1720-05-01-.10 EMERGENCY POWERS. When, in the judgment of the Chancellor of The University of Tennessee at Martin, conditions are such that an emergency exists which makes it impossible for the system of judicial boards to function, he/she may suspend these procedural regulations. If the procedures are suspended, he/she may substitute for them arrangements for handling disciplinary matters that will insure the orderly functioning of the University and at the same time safeguard the basic rights of the students and student organizations.

1720-05-01-.11 INVOLUNTARY MEDICAL WITHDRAWAL OR SUSPENSION.

- (1) When a student is unable to effectively pursue his/her academic work, or when his/her behavior is disruptive to the normal educational processes of the University, or constitutes a threat to members of the University community, due to, among other things, alcohol use, drug use, or a physical or mental incapacitating condition, he/she may be withdrawn or temporarily suspended from the University as hereinafter provided.
- (1) Withdrawal. A student may be withdrawn from the University only after an evaluation of his/her mental and physical condition by a panel of at least three (3) persons appointed by the Vice Chancellor for Student Affairs. The student shall be notified of the reasons for the evaluation and given an opportunity to present evidence to the committee. The committee's findings and recommendations shall be forwarded to the Vice Chancellor for Student Affairs, who will notify the student in writing of his/her decision.
- (2) Temporary Suspension. Whenever a student, because of his/her mental or physical condition constitutes a danger to persons or property, or when his/her behavior is disruptive to the normal educational processes of the University, he/she may be suspended from the University, for a reasonable period of time, by the Vice Chancellor for Student Affairs. If the University does not withdraw the student in accordance with procedures outlined above, he/she may return to the University at the end of the suspension period.
- (3) Grades. When a student is withdrawn or temporarily suspended from the University, he/she may be assigned a grade of "W" or "I," whichever is deemed appropriate by the faculty member involved.
- (4) Readmission.
 - (a) A student who is involuntarily withdrawn under this rule may not be

readmitted to the University before the start of the next semester or without the approval of the Vice Chancellor for Student Affairs. The student shall also meet all of the admission requirements of the University and of the school or college in which he/she wishes to be readmitted.

- (b) A student shall submit a written request for permission to reapply to the University with the Vice Chancellor for Student Affairs by October 1 for Spring enrollment, by February 1 for Summer enrollment, and by May 1 for Fall enrollment. The student's written request shall include an explanation of why the Vice Chancellor for Student Affairs should allow the student to reapply and an explanation of the student's plan to transition successfully back into the academic community.
- (c) The Vice Chancellor for Student Affairs may require the student to provide the panel of individuals who recommended that the student be involuntarily withdrawn with proof that the condition that caused the withdrawal is no longer present or that the condition is under control through treatment such that the student does not present a direct threat to the health or safety of him/herself or others and will not disrupt the normal educational processes of the University. Proof may consist of a current medical or mental health evaluation, demonstration of ongoing medical or mental health treatment, and a plan for treatment upon readmission. The panel may request any other information or documentation that it deems necessary. In exceptional circumstances, the panel may request a second, independent opinion of a qualified medical or mental health professional paid for by the University. In cases where the Vice Chancellor for Student Affairs has imposed other conditions for readmission, it is the responsibility of the student to provide documentation of compliance with those conditions.
- (d) The panel's recommendation concerning reenrollment or readmission shall be provided to the Vice Chancellor for Student Affairs, who will notify the student in writing of his/her decision. The decision of the Vice Chancellor for Student Affairs is final and may not be appealed.

1720-05-01-.12 INSPECTION AND SEARCH POLICIES.

- (1) Entry by University authorities into occupied rooms in residence halls will be divided into three (3) categories; inspection, search, and emergency. Inspection is defined as the entry into an occupied room by University authorities in order to ascertain the health and safety conditions in the room, to check the physical condition of the room, to make repairs on facilities, or to perform cleaning and janitorial operations. Search is defined as the entry into an occupied room by on-campus authorities for the purpose of investigating suspected violations of campus regulations. An emergency situation exists when the delay necessary to obtain a search authorization constitutes an apparent danger to person, property,

or the building itself.

- (2) **Inspection:** Scheduled inspections by on-campus authorities with the exception of daily janitorial operations shall be preceded, if possible, by twenty-four (24) hours' notice to the residents. During the inspection there will be no search of drawers, closets, or personal belongings. This policy is applicable for residence halls and fraternity houses.
- (3) **Search:** On-campus authorities will not enter a room for purposes of search without the permission of the resident unless they have a campus authorization to search, authorized by the Vice Chancellor for Student Affairs or his/her designee, which specifies the reasons for the search and the objects or information sought, or unless they enter in compliance with federal or state law. If possible, the student should be present during the search. Normally these searches will not be made unless the Vice Chancellor for Student Affairs or his/her designee is present.
- (4) If the search reveals objects the possession of which violates a law or a University rule, the University may take appropriate disciplinary action even though the objects were not listed on the search authorization.

1720-05-01-.13 ACADEMIC DISHONESTY. The University of Tennessee at Martin has chosen as its primary objective quality undergraduate education. Commitment to this objective must include an obligation by all members of the University community to promote and protect the highest standards of integrity in study, research, instruction and evaluation. Dishonesty or unethical behavior does not belong at an institution dedicated to the promotion of knowledge and learning. Integrity of the academic process requires fair and impartial evaluation by faculty and honest academic conduct by students. A student may be found to have violated this obligation if he/she:

- (1) Refers during an academic evaluation to materials, sources, or devices not authorized by the instructor;
- (2) Provides assistance during an academic evaluation or assignment to another person in a manner not authorized by the instructor;
- (3) Receives assistance during an academic evaluation or assignment from another person in a manner not authorized by the instructor;
- (4) Possesses, buys, sells, obtains, or uses a copy of any materials intended to be used as an instrument of academic evaluation in advance of its administration;
- (5) Acts as a substitute for another person in any academic evaluation or assignment;
- (6) Utilizes another person as a substitute for him/herself in any academic evaluation or assignment;

- (7) Practices any form of deceit in an academic evaluation or assignment;
- (8) Depends on the aid of others, in a manner expressly prohibited by the instructor, in the research, preparation, creation, writing, performing, or publication of work to be submitted for academic credit or evaluation;
- (9) Provides aid to another person, knowing such aid is expressly prohibited by the instructor, in the research, preparation, creation, writing, performing, or publication of work to be submitted for academic credit or evaluation;
- (10) Indulges in plagiarism by presenting as one's own, for academic evaluation or assignment, the ideas, representations, or works of another person or persons without customary and proper acknowledgment of sources;
- (11) Submits the work of another person in a manner that represents the work to be one's own;
- (12) Knowingly permits one's work to be submitted by another person without the instructor's authorization;
- (13) Attempts deceitfully to influence or change one's academic evaluation or record;
or
- (14) Indulges in conduct that is so disruptive as to infringe upon the rights of an instructor or fellow students during a class or examination session.