



**POLICY ON SEXUAL MISCONDUCT,  
RELATIONSHIP VIOLENCE, AND STALKING**

**EFFECTIVE AUGUST 13, 2015**

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# University of Tennessee at Chattanooga

## Policy On Sexual Misconduct, Relationship Violence, And Stalking

### I. Introduction

The University of Tennessee at Chattanooga is committed to creating and maintaining a learning, living, and working environment free from Sexual Misconduct, Relationship Violence, Stalking, and Retaliation. Those prohibited types of conduct will not be tolerated and will be grounds for disciplinary action up to, and including, permanent dismissal from UTC and/or termination of employment.

Sexual Misconduct, Relationship Violence, Stalking, and Retaliation are collectively referred to in this policy as Prohibited Conduct. This policy describes Prohibited Conduct; explains multiple options for reporting Prohibited Conduct; sets forth the procedures UTC will follow for promptly, thoroughly, and equitably investigating and resolving reports of Prohibited Conduct in order to eliminate Prohibited Conduct, prevent its recurrence, and address its effects on an individual or the UTC community; identifies resources and services for Complainants; and describes UTC's prevention and awareness programs relating to Prohibited Conduct; and implements the requirements of Title IX, Title VII and the Clery Act with respect to Prohibited Conduct.

#### A. Scope and Applicability; Definitions

##### 1. Individuals Covered by this Policy

This policy applies to the conduct of and protects UTC students, UTC employees, UTC volunteers, UTC contractors, and third parties participating in a UTC program or activity. This policy applies regardless of the Complainant's or the Respondent's sex, sexual orientation, or gender identity. Prohibited Conduct can be committed by anyone (regardless of sex, sexual orientation, or gender identity), can occur between strangers or acquaintances, and can occur between people of the same or of different sexes, sexual orientations and/or gender identities.

##### 2. Jurisdiction

UTC's jurisdiction concerning misconduct by students committed off of University-controlled property is outlined in the UTC Student Handbook. With respect to employees and other non-students, this policy applies to conduct which: (i) occurs on University-controlled property; (ii) occurs in the context of a University employment or education program or activity; and/or (iii) occurs outside the context of a University employment or education program or activity, but has continuing adverse effects on University-controlled property or in any University employment or education program or activity.

##### 3. Definitions

Key terms used in this policy (such as Sex Discrimination, Sexual Misconduct, and Relationship Violence) are defined in Section II or Appendix A and are capitalized throughout this policy.

## **B. Title IX; Title IX Coordinator; Deputy Title IX Coordinators**

UTC is a recipient of federal financial assistance for education activities, and in accordance with the provisions of Title IX, all of its education programs and activities are subject to the prohibition against Sex Discrimination. UTC's Nondiscrimination Statement prohibits Sex Discrimination in any UTC education program or activity, including employment and admissions. Title IX applies to all students, employees, applicants for admission or employment, volunteers and visitors at UTC and prohibits unequal treatment on the basis of sex as well as Sexual Harassment, Sexual Assault, and Sexual Exploitation, which are all types of Sex Discrimination.

Reports or complaints of Sex Discrimination or Prohibited Conduct, or questions about UTC's policies, procedures, resources, or programs concerning any of those issues, may be directed to UTC's Title IX Coordinator or one of UTC's Deputy Title IX Coordinators. The responsibilities of the Title IX Coordinator and Deputy Title IX Coordinators are summarized below and are described in more detail in other sections of this policy. The Title IX Coordinator and Deputy Title IX Coordinators generally are available Monday – Friday on UTC business days from 8:00 a.m. to 5:00 p.m.

### **UTC's Title IX Coordinator is:**

Stephanie Rowland  
Title IX Coordinator  
Office of the Chancellor  
Department 5605  
615 McCallie Ave., 101 Founders Hall  
Chattanooga, TN 37403  
Phone: 423-425-4255  
Fax: 423-756-5559  
stephanie-rowland@utc.edu  
[utc.edu/sexual-misconduct](http://utc.edu/sexual-misconduct)

### **The Title IX Coordinator's responsibilities generally include:**

- Coordinating and maintaining ultimate oversight responsibility with respect to UTC's compliance with Title IX;
- Receiving, tracking, and monitoring reports of Sex Discrimination, including Prohibited Conduct, and maintaining records of such reports;
- Interacting with UTC's Survivor Advocacy Program;
- Ensuring prompt, thorough, and equitable reviews, investigations and resolutions of reports of Sex Discrimination, including Prohibited Conduct, generally by the Office of Equity and Diversity (if the Respondent is an employee or third party) or the Office of Student Conduct (if the Respondent is a student);
- Identifying and addressing patterns or systemic problems concerning Prohibited Conduct;
- Coordinating training, prevention, and awareness efforts concerning Prohibited Conduct;
- Supporting the Deputy Title IX Coordinators;
- Providing information to students, employees, and third parties concerning this policy;
- Coordinating the provision of Interim Measures;
- Make appropriate reports to UTC PD for purposes of Clery Act crime statistics; and
- Being available to meet with students, employees, and third parties, including, without limitation, Complainants, Reporters, and Respondents.

The Title IX Coordinator is assisted by three trained Deputy Title IX Coordinators, who also are accessible to members of the UTC community for consultation and assistance.

**The Deputy Title IX Coordinator for Students is:**

James S. Hicks, Dean of Students  
Office of the Dean of Students  
Department 1951  
615 McCallie Ave.  
Chattanooga, TN 37403  
(423) 425-4761  
jim-hicks@utc.edu  
[utc.edu/dean-students/](http://utc.edu/dean-students/)

**The Deputy Title IX Coordinator for Students is responsible for Title IX compliance for matters involving students, including:**

- Coordinating with the Survivor Advocacy Program;
- Coordinating and maintaining oversight responsibility with respect to the Division of Student Development's compliance with Title IX;
- Receiving, tracking, and monitoring reports of Sex Discrimination involving students, including Prohibited Conduct;
- Identifying and addressing patterns or systematic problems concerning Prohibited Conduct involving students, in coordination with the Title IX Coordinator;
- Coordinating training, prevention, and awareness efforts for students concerning Prohibited Conduct;
- Assisting the Title IX Coordinator;
- Providing information to students about this policy;
- Coordinating the provision of Interim Measures to students; and
- Being available to meet with students, including, without limitation, Complainants, Reporters, and Respondents.

**UTC's Deputy Title IX Coordinator for Employees is:**

Dr. Bryan Samuel  
Office of Equity and Diversity  
Department 5455  
720 McCallie Ave.  
Chattanooga, TN 37403  
(423) 425-5468  
bryan-samuel@utc.edu  
[utc.edu/equity-diversity](http://utc.edu/equity-diversity)

**The Deputy Title IX Coordinator for Employees is responsible for Title IX compliance for matters involving employees, including:**

- Receiving, tracking, and monitoring reports of Sex Discrimination involving employees, including Prohibited Conduct;
- Identifying and addressing patterns or systemic problems concerning Prohibited Conduct involving employees, in coordination with the Title IX Coordinator;
- Coordinating training, prevention, and awareness efforts for employees concerning Prohibited Conduct;
- Assisting the Title IX Coordinator;
- Providing information to employees about this policy;
- Coordinating the provision of Interim Measures to employees; and
- Being available to meet with employees, including, without limitation, Complainants, Reporters, and Respondents.

**UTC's Deputy IX Coordinator for Athletics is:**

Laura Herron  
Senior Associate Athletics Director/Senior Woman Administrator  
UTC Department 3503  
615 McCallie Ave.  
Chattanooga, TN 37403  
(423) 425-4583  
Laura-Herron@utc.edu

**The Deputy IX Coordinator for Athletics is responsible for Title IX compliance for matters involving students and employees associated with intercollegiate athletics, including:**

- Coordinating and maintaining oversight responsibility with respect to the Athletic Department's compliance with Title IX, including gender equity;
- Receiving reports of Sex Discrimination, including Prohibited Conduct, involving student-athletes, and referring those reports to the Title IX Coordinator and/or the Deputy Title IX Coordinators;
- Identifying and addressing any patterns or systemic problems concerning Sexual Misconduct committed by or against students and employees involved in intercollegiate athletics;
- Coordinating training, prevention, and awareness efforts for students and employees involved in intercollegiate athletics concerning Prohibited Conduct;
- Assisting the Title IX Coordinator and the Deputy Title IX Coordinator for Students;
- Providing information to students and employees involved in intercollegiate athletics on this policy;
- Coordinating the provision of Interim Measures; to students and employees involved in intercollegiate athletics; and
- Being available to meet with students and employees involved in intercollegiate athletics, including, without limitation, Complainants, Reporters, and Respondents.

**Inquiries or complaints concerning Title IX also may be referred to the United States Department of Education:**

United States Department of Education  
Office for Civil Rights  
61 Forsyth Street, S.W., Suite 19T10  
Atlanta, GA 30303-8927  
(404) 974-9406 (phone)  
(404) 974-9471 (fax)  
OCR.Atlanta@ed.gov

**C. Additional Information**

Questions about this policy should be directed to the Title IX Coordinator or a Deputy Title IX Coordinator. Additional information about UTC's procedures and programs relating to Prohibited Conduct can be found online at: [utc.edu/sexual-misconduct](http://utc.edu/sexual-misconduct).

## II. Prohibited Conduct

This policy prohibits the following conduct defined below:

- Sexual Misconduct
  - Sexual Assault
  - Sexual Harassment
  - Sexual Exploitation
  - Sex Offense Crime
- Relationship Violence
  - Dating Violence
  - Domestic Violence
  - Relationship Violence Crime
- Stalking
- Retaliation

### A. Definitions of Prohibited Conduct

1. **Sexual Misconduct:** A term that encompasses Sexual Harassment, Sexual Assault, Sexual Exploitation, and all other words and/or conduct that would constitute a Sex Offense Crime. Sexual Misconduct may be a form of Sex Discrimination prohibited by federal and state antidiscrimination laws, such as Title VII and Title IX.

- (a) Sexual Assault: Engaging in Sexual Contact or Sexual Intercourse with another person without the Consent of that person.

- (1) *Sexual Contact:* 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 includes 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.

- (2) *Sexual Intercourse:* 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.

- (b) Sexual Harassment: 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.

- (1) With respect to an employee's conduct directed toward another employee, Sexual Harassment means: "Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature . . . when: (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting that individual; or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment." (*The source of this definition is: University of Tennessee*



- (2) With respect to an employee's conduct directed toward a student or another non-employee, Sexual Harassment means: "Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when: (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's participation in an educational program; (2) submission to or rejection of such conduct by an individual is used as the basis for evaluation or advancement in an educational program; or (3) 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." *(This definition is based on: University of Tennessee System Human Resources Policy 0280 ("Sexual Harassment") ([http://policy.tennessee.edu/hr\\_policy/hr0280/](http://policy.tennessee.edu/hr_policy/hr0280/)))*
- (3) With respect to the conduct of a student or other non-employee, Sexual Harassment is defined as 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 UTC. 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. *(This definition is based on Standard of Conduct Number 6 for students, a copy of which can be found in the UTC Student Handbook.)*
- (c) Sexual Exploitation: 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 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.
- (d) Sex Offense Crime: This term is defined in Appendix A.

2. **Relationship Violence:**<sup>1</sup> A term that encompasses Dating Violence, Domestic Violence, and all other words and/or conduct that would constitute a Relationship Violence Crime. Relationship Violence may be a form of Sex Discrimination prohibited by federal and state antidiscrimination laws, such as Title VII and Title IX.

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<sup>1</sup> The definitions of Dating Violence, Domestic Violence, and Relationship Violence Crime are based on the Clery Act.

- (a) **Dating Violence:** 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. Dating Violence does not include acts covered under the definition of Domestic Violence.
  - (b) **Domestic Violence:** A felony or misdemeanor crime of violence committed: (1) by a current or former spouse or intimate partner of the victim; (2) by a person with whom the victim shares a child in common; (3) by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner; (4) 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 (5) 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.
  - (c) **Relationship Violence Crime:** This term is defined in Appendix A.
3. **Stalking:** Stalking includes both the crime of stalking in Tennessee and the crime of stalking defined by the Clery Act:
- (a) **Tennessee Crime:** The crime of stalking in Tennessee is defined in Tennessee Code Annotated § 39-17-315.
  - (b) **Clery Act Crime:** 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:
    - (1) "course of conduct" means two 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;
    - (2) "reasonable person" means a reasonable person under similar circumstances and with similar identities to the victim; and
    - (3) "substantial emotional distress" means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

Stalking may be a form of Sex Discrimination prohibited by federal and state antidiscrimination laws, such as Title VII and Title IX.

4. **Retaliation:** An act or attempted act taken because of a person's participation in a protected activity that would discourage a Reasonable Person from engaging in protected activity. Protected activity includes a person's Good Faith: (1) opposition to Prohibited Conduct; (2) report of Prohibited Conduct to the University; (3) participation (or reasonable expectation of participation) in any manner in an investigation, proceeding, hearing, or Interim Measure under this policy; or (4) exercise of rights or responsibilities under any provision of the Clery Act. Retaliation is a violation of this policy regardless of whether the underlying allegation of a violation of this policy is ultimately found to have merit. Retaliation should be reported in the same manner in which

Prohibited Conduct is reported under this policy (Section III). When the University receives notice of alleged Retaliation, the University will take immediate and appropriate steps to investigate the alleged Retaliation. The University will take strong responsive action if it determines that Retaliation occurred, which may include disciplinary action independent of any sanction or Interim Measures imposed in response to the underlying allegation of misconduct. The University generally will investigate and resolve reports of Retaliation in the same manner in which it handles reports of other Prohibited Conduct under this policy (Section V).

**B. Related Definitions: Consent; Coercion; Incapacitation; Good Faith; Reasonable Person**

1. **Consent (or Consensual):** Consent is an affirmative and voluntary agreement by a person to engage in a specific sexual act.<sup>2</sup>

***Consent Must Be Obtained***

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

***Consent Must Be Affirmative***

Consent must be affirmative, which 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.

**Consent cannot be obtained by or inferred from:**

- Silence that is not accompanied by non-verbal actions conveying a clear agreement to engage in a particular sexual act;
- Consent communicated by the other person on a previous occasion;
- Consent communicated to another person;
- 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);
- The sexual arousal of the other person;

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<sup>2</sup> The definition of Consent for the purposes of criminal law in the State of Tennessee is explained in **Appendix F**. The information provided in this policy concerning Tennessee law is provided in accordance with the Clery Act. It is not intended, nor should it be construed, as legal advice.

- A current or previous dating, romantic, intimate, or sexual relationship with the other person;
- Currently or previously cohabitating with the other person;
- The other person's attire;
- The other person's reputation;
- The other person's giving or acceptance of gifts; or
- The other person's extension or acceptance of an invitation to go to a private residence, room, or another location.

**Consent Must be *Voluntary***

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, persons subject to this policy 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.)

**Consent Must be *Continual***

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 persons subject to this policy to communicate with one another throughout a sexual encounter to ensure that any progression of sexual activity is done with Consent.

2. **Coercion:** 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).

3. **Incapacitated (or Incapacitation):** 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.

4. **Good Faith:** 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. A report or other information communicated during an investigation, hearing, or other proceeding under this policy is not made in good faith if made with knowing or reckless disregard for information that would negate the report or information.
5. **Reasonable Person:** 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.

### C. Discipline for Prohibited Conduct

Prohibited Conduct committed by students violates UTC's Standards of Conduct for students, which can be found in the UTC Student Handbook. The disciplinary penalties that may be imposed on students who violate the Standards of Conduct also can be found in the UTC Student Handbook.

Prohibited Conduct committed by employees violates standards of conduct that have been established in existing University policies, including without limitation, the University's Nondiscrimination Statement (<http://oed.utk.edu/statement/>), University of Tennessee Human Resources Policy 0280 (Sexual Harassment) ([http://policy.tennessee.edu/hr\\_policy/hr0280/](http://policy.tennessee.edu/hr_policy/hr0280/)), and University of Tennessee System Human Resources Policy 0580 (Code of Conduct) ([http://policy.tennessee.edu/hr\\_policy/hr0580/](http://policy.tennessee.edu/hr_policy/hr0580/)). This policy supplements existing University standards of conduct in order to be more specific concerning the University's prohibition of Sexual Misconduct, Relationship Violence, Stalking, and Retaliation.<sup>3</sup> Employees who violate this policy will be subject to disciplinary action, up to, and including, termination of employment, in accordance with University policies, including, without limitation, University of Tennessee System Human Resources Policy 0525 (Disciplinary Action), University of Tennessee System Human Resources Policy 0640 (Grievances), and the University of Tennessee at Chattanooga Faculty Handbook.

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<sup>3</sup> For example, **University of Tennessee Human Resources Policy 0280** (Sexual Harassment) also prohibits an employee from engaging in the Sexual Harassment of another employee. Sexual Assault is an extreme type of Sexual Harassment.

### III. How To Report Sexual Misconduct And Relationship Violence

UTC encourages Complainants and others who are aware of Prohibited Conduct to promptly report the incident to UTC and/or to law enforcement.<sup>4</sup>

This policy describes three options for informing someone about Prohibited Conduct:

1. Report Prohibited Conduct to the Title IX Coordinator, a Deputy Title IX Coordinator, or another UTC “Mandatory Reporter” (described in Section III.A);
2. Report Prohibited Conduct to UTCPD or local law enforcement (described in Section III.B); and/or
3. Confide in a UTC “Confidential Employee” and/or a confidential resource external to UTC (described in Section IV.A).

Those options are not mutually exclusive; in other words, a Complainant may pursue one, two, or all three of those options. This policy describes all three options in detail so that members of the UTC community can make informed choices about whether and how to inform someone about Prohibited Conduct.

#### A. How to Report to UTC (Other than to UTCPD)

Complainants<sup>5</sup> are not required to report Prohibited Conduct to UTC if they do not want UTC to respond to the incident or assist with Interim Measures. However, reporting a violation of this policy to UTC empowers Complainants to obtain the support they need and enables UTC to respond appropriately, including conducting a prompt, thorough, and equitable investigation and, if warranted, taking disciplinary action against a Respondent. If a person reports an incident of Prohibited Conduct to UTC, there is no requirement that the Complainant pursue criminal prosecution or University discipline against a Respondent. The University recognizes that a Complainant’s decision on how to proceed after a report is filed is a process that may unfold over time; thus, at the time a report is made to UTC, a Complainant does not have to decide whether to request any particular course of action.

This policy requires certain University employees, called Mandatory Reporters, to report information they receive concerning Prohibited Conduct to UTC in accordance with Section VI. Not all UTC employees are Mandatory Reporters.<sup>6</sup> Some University employees are encouraged but are not obligated to disclose Prohibited Conduct to UTC. Other University employees, called Confidential Employees (Section IV.A.1), are legally or ethically prohibited from disclosing Prohibited Conduct to UTC.

The only way for a Complainant (or any other person) to provide notice to UTC of an incident of Prohibited Conduct is to report the incident to a Mandatory Reporter. A Complainant may opt to report an incident of Prohibited Conduct to a Mandatory Reporter but decline to disclose the identity of the Respondent; in that case, UTC will offer Complainant Interim Measures, but UTC’s ability to investigate the incident and pursue disciplinary action against the Respondent or take other remedial action will be limited. If an incident is not reported to a Mandatory Reporter, then UTC will not be able to take steps to: identify resources for the Complainant, such as Interim Measures;<sup>7</sup> or promptly, thoroughly, and equitably investigate the incident and/or resolve the situation in

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<sup>4</sup> Mandatory Reporters are required to report information they receive about Prohibited Conduct. UTC strongly encourages employees and students who are not Mandatory Reporters to report information about Prohibited Conduct to one of the reporting options described in **Section III.A**.

<sup>5</sup> The reporting options in this section also are available to a Reporter who is not a Complainant.

<sup>6</sup> However, all employees are required to report suspected child abuse or child sexual abuse (**Section VI.A**).

<sup>7</sup> UTC Confidential Employees (Section IV.A.1) should be able to provide information on Interim Measures.

order to eliminate the Prohibited Conduct, prevent its recurrence, and address its effects on the Complainant or the UTC community.

Because Mandatory Reporters have an obligation to report information they receive about Prohibited Conduct (and take other responsive actions), one of the purposes of this Section III.A is to inform students, employees and other persons about which University employees are Mandatory Reporters so that students, employees and other persons can make informed decisions about whether to disclose information to those University employees. Whether an employee is a Mandatory Reporter will vary based on factors such as the status of the Complainant and the Respondent (i.e., whether they are students, employees, and/or persons who are neither students nor employees) and the employee's authority to address violations of this policy. In addition to this Section III.A, Appendix B and Appendix C identify Mandatory Reporters. Questions concerning whether a particular employee is a Mandatory Reporter should be directed to the Title IX Coordinator.

Mandatory Reporters are not confidential University resources like the Confidential Employees identified in Section IV.A.1. However, subject to a Complainant's request for confidentiality (Section III.A.5) and applicable legal disclosure obligations (Section III.E), information communicated to a Mandatory Reporter will initially be shared only within the limited circle of those University employees whom UTC reasonably needs to involve in UTC's response to an incident of Prohibited Conduct. Subsequently, information about the report will be shared only as reasonably necessary with investigators, witnesses, and the Respondent, subject to a Complainant's request for confidentiality and applicable legal disclosure obligations. In accordance with FERPA, Mandatory Reporters who are not employees of UTCPD will not share information with UTCPD or any other law enforcement agency without a Complainant's written consent or unless required by law.

A report of Prohibited Conduct that alleges Sex Discrimination generally must be filed within 300 days of the alleged discriminatory action. In certain circumstances, however, at the discretion of the Title IX Coordinator, such as when the Complainant is a student, a report communicated to UTC outside of that time limit may be investigated. The University does not limit the time frame for reporting an incident of Prohibited Conduct committed by a Respondent who is not an employee, although a delay in reporting may impact UTC's ability to: obtain evidence; conduct a prompt, thorough, and equitable investigation; and/or otherwise respond and take appropriate action.

### **1. Mandatory Reporters When the Complainant is a Student**

This Section III.A.1 describes the non-law enforcement options for a Complainant who is a UTC student to report Prohibited Conduct to UTC.

A Complainant who is a student is encouraged to report Prohibited Conduct to one of the following UTC employees, who are Mandatory Reporters:

- Title IX Coordinator (Section IV.B)
- Deputy Title IX Coordinators (Section IV.B)
- Office of Student Conduct (Section IV.B)

A Complainant who is a student may also report Prohibited Conduct to one of the University's other non-law enforcement Mandatory Reporters, who are identified in Appendix B.

Questions about how to contact any of the individuals identified above may be directed to the Title IX Coordinator.

### **2. Mandatory Reporters When the Complainant is an Employee**

This Section III.A.2 describes the non-law enforcement options for a Complainant who is a University employee to report Prohibited Conduct to the University.

A Complainant who is a University employee is encouraged to report Prohibited Conduct to one of the following University employees, who are Mandatory Reporters:

- Title IX Coordinator or the Office of Equity & Diversity
- The Director of Human Resources, Assistant Director of Human Resources, or Human Resources Generalist
- The immediate supervisor of the Complainant
- The immediate supervisor of the Respondent (if the Respondent is a University employee)

A Complainant who is a University employee may also report Prohibited Conduct to one of the University's other non-law enforcement Mandatory Reporters, who are identified in Appendix C.

Questions about how to contact any of the individuals identified above may be directed to the Title IX Coordinator.

### **3. Mandatory Reporters When the Complainant is Neither a UTC Student Nor a UTC Employee**

For a Complainant who is neither a UTC student nor a UTC employee, the Title IX Coordinator is the only non-law enforcement option to report a violation of this policy to UTC.

### **4. What to Expect after Reporting Prohibited Conduct to a Mandatory Reporter**

After receiving a report of Prohibited Conduct (either directly from a Reporter or indirectly from a Mandatory Reporter), the Title IX Coordinator, a Deputy Title IX Coordinator, and/or an employee in UTC's Division of Student Development will initiate immediate and appropriate steps by UTC to: have an appropriate UTC employee meet with or otherwise communicate with the Complainant; in cases of Sexual Assault, Relationship Violence, or Stalking, provide a Complainant with a copy of this policy and/or another written publication approved by the Title IX Coordinator to inform the Complainant of the Complainant's rights under this policy (if that has not already been done by a Mandatory Reporter); evaluate whether Interim Measures need to be implemented and assist with the implementation of Interim Measures; and, subject to a Complainant's request for confidentiality (Section III.A.5), initiate the investigation and resolution procedures outlined in Section V of this policy if, based on an initial assessment, the alleged conduct meets the definition of Prohibited Conduct. Upon request, the Title IX Coordinator, a Deputy Title IX Coordinator, and/or an employee in UTC's Division of Student Development also can assist a Complainant in reporting the incident to law enforcement.

### **5. If the Complainant Requests Confidentiality: How UTC Will Weigh the Request and Respond**

If a Complainant discloses an incident of Prohibited Conduct to a Mandatory Reporter but wishes to maintain confidentiality or requests that no investigation or discipline be pursued, UTC will seriously weigh that request against UTC's obligation to provide a safe, non-discriminatory environment for UTC students and employees, including the Complainant.

If UTC honors the Complainant's request for confidentiality, UTC's ability to meaningfully investigate the incident and pursue disciplinary action against the Respondent(s) may be limited. There are times when UTC may not be able to honor a Complainant's request in order to provide a safe, non-discriminatory environment. For example, if UTC has credible information that the Respondent has committed one or more prior acts of Prohibited Conduct, then the balance of factors might compel UTC to investigate the allegation, and, if appropriate, pursue disciplinary action in a manner that may require disclosure of the Complainant's identity to the Respondent.

UTC has designated the Title IX Coordinator to evaluate requests by Complainants for confidentiality. When weighing a Complainant's request for confidentiality or that no investigation or discipline be pursued, the Title IX Coordinator will consider a range of factors, including the following:

- The increased risk that the Respondent will commit additional acts of Prohibited Conduct, such as:
  - Whether there have been other reports of Prohibited Conduct about the same Respondent;
  - Whether the Respondent has a history of Prohibited Conduct, whether at UTC or prior to enrollment at UTC;



- Whether the Respondent threatened further Prohibited Conduct against the Complainant or others; and
- Whether the Prohibited Conduct was committed by multiple perpetrators;
- The nature and scope of the Prohibited Conduct, including whether the Prohibited Conduct was perpetrated with a weapon;
- The ages and roles of the Complainant and the Respondent;
- Whether the Complainant is a minor and the Title IX Coordinator is required by Tennessee law to report the incident;
- Whether UTC can pursue an investigation and/or resolution without the participation of the Complainant (e.g., whether there are other available means to obtain relevant evidence of the Prohibited Conduct such as security cameras or physical evidence);
- Whether the Complainant's report reveals a pattern of perpetration (e.g., via illicit use of drugs or alcohol) at a given location or by a particular group; and
- UTC's commitment to providing a safe, non-discriminatory environment, including the risk posted to any individual or to the campus community by not proceeding with an investigation.

The presence of one or more of those factors could lead UTC to investigate and, if appropriate, pursue disciplinary action. If none of these factors is present, UTC will likely respect the Complainant's request for confidentiality. If UTC determines that it can respect a Complainant's request for confidentiality, UTC will take reasonable steps to respond to the report consistent with the Complainant's request for confidentiality and will take prompt actions that UTC determines are necessary to protect and assist the Complainant while keeping the Complainant's identity confidential (e.g., providing the Complainant with Interim Measures).

If UTC determines that it cannot maintain a Complainant's confidentiality, then UTC will inform the Complainant prior to starting an investigation and will, to the extent possible and unless otherwise required by law, only share information with people responsible for handling UTC's response. If UTC determines that it must disclose the Complainant's identity to the Respondent, then UTC will inform the Complainant of that determination prior to the disclosure. UTC will honor a request by the Complainant that UTC inform the Respondent that the Complainant asked UTC not to investigate or seek discipline. UTC will take ongoing steps that it determines are reasonable and appropriate to protect the Complainant from Retaliation or harm and may work with the Complainant to create a safety plan. Retaliation against the Complainant, whether by students or UTC employees, will not be tolerated. UTC will also assist the Complainant to access the support resources identified in Section IV, including Interim Measures, and inform the Complainant of the right to report a crime to campus or local law enforcement (and provide the Complainant with assistance in reporting if the Complainant requests it).

UTC will not require a Complainant to participate in any investigation or disciplinary proceeding.

Because UTC is under a continuing obligation to address the issues of Prohibited Conduct campus-wide, reports of Prohibited Conduct (including non-identifying reports) may also prompt UTC to consider broader remedial action – such as increased monitoring, supervision or security at locations where the reported Prohibited Conduct occurred; increasing education and prevention efforts, including to targeted population groups; conducting additional climate assessments/victimization surveys; and/or revisiting its policies and practices.

## **6. Amnesty for Students Who Report Prohibited Conduct to UTC**

UTC recognizes that a student who is under the influence of alcohol and/or drugs at the time of an incident may be hesitant to report an incident to UTC because of a fear of UTC disciplinary sanctions for student's own violation of the Standards of Conduct. Because of the importance to UTC of responding to incidents of Prohibited Conduct, a student who reports Prohibited Conduct to UTC or testifies or provides information in a University investigation into alleged Prohibited Conduct will not be subject to disciplinary action by UTC for personal consumption of alcohol or other drugs, or minor offenses, at or near the time of the reported incident, but may be responsible for other, more serious conduct that harmed or placed the health or safety of any other person at risk.

## **B. Reporting to Law Enforcement**

Prohibited Conduct may constitute both a violation of this policy and the criminal law. Therefore, UTC encourages persons to report incidents of Prohibited Conduct to law enforcement. Prompt reporting of an incident to law enforcement is especially critical for incidents of Sexual Assault and Relationship Violence because the collection and preservation of evidence relating to Sexual Assault and Relationship Violence often is essential for law enforcement investigations and criminal prosecutions.

A Complainant has the right to decline to report the incident to law enforcement. Even if a Complainant does not report the incident to law enforcement, the Complainant may still request Interim Measures from UTC by reporting the incident to the Title IX Coordinator, a Deputy Title IX Coordinator, or another Mandatory Reporter.

### **1. Contact Information for Campus and Local Law Enforcement**

The following options are available 24 hours, seven days a week, for reporting an incident of Prohibited Conduct to law enforcement:

| <b>Incident Location</b>                                  | <b>Contact</b>   |
|---|--|
| Regardless of where the incident occurred                 | Call 911 in an emergency<br><br>or<br><br>UTCPD<br>400 Palmetto Street. Chattanooga, TN 37403<br>423-425-4357<br><a href="http://utc.edu/public-safety/">utc.edu/public-safety/</a>                              |
| In the City of Chattanooga                                | Chattanooga Police Dept. (CPD) (423-698-2525)<br>3410 Amnicola Hwy. Chattanooga, TN 37406<br><a href="http://chattanooga.gov/police-department">chattanooga.gov/police-department</a><br><br>or<br><br>UTCPD     |
| In Hamilton County but outside of the City of Chattanooga | Hamilton County Sheriff<br>600 Market St. G10 Chattanooga, TN 37402<br>423-209-7000<br><a href="http://hcsheriff.gov">hcsheriff.gov</a><br><br>or<br><br>UTCPD   |
| Outside of Hamilton County                                | Contact the law enforcement agency that has jurisdiction over the location where the incident occurred<br><br>or<br><br>Contact UTCPD for assistance in contacting another jurisdiction's law enforcement agency |

Upon the Complainant's request, the Title IX Coordinator, a Deputy Title IX Coordinator, and/or an employee in UTC's Division of Student Development will assist a Complainant in contacting UTCPD or the appropriate local law enforcement agency.

Employees of UTCPD are also Mandatory Reporters. Accordingly, if a person reports an incident to UTCPD, and the incident has not been previously reported to a Mandatory Reporter outside of UTCPD, then UTCPD will contact the Title IX Coordinator, a Deputy Title IX Coordinator, and/or an employee in UTC's Division of Student Development who has been designated to receive such reports. The Title IX Coordinator, a Deputy Title IX Coordinator, and/or an employee in UTC's Division of Student Development will contact the Complainant regarding UTC's response to the report (Section III.A.4). In contrast, if a Complainant reports the incident to CPD or another law enforcement agency other than UTCPD, then the Complainant also will need to report the incident to a Mandatory Reporter if the Complainant wants UTC to take any action under this policy.

## **2. What to Expect after Reporting Prohibited Conduct to Law Enforcement**

Even if the Complainant is unsure whether to pursue criminal prosecution or an order of protection, UTC recommends that the Complainant report the incident to law enforcement as soon as possible. In most cases, after addressing a Complainant's immediate safety needs and/or needs for medical care, a law enforcement officer will meet with the Complainant and take a statement about what occurred. It may help a Complainant to write down every detail the Complainant can remember, as soon as possible, so the Complainant can communicate the details to law enforcement. In cases of Sexual Assault and Relationship Violence, in addition to taking a statement, the law enforcement officer may ask to examine the scene of the incident and collect bedding, clothing, or other items of evidentiary value. A law enforcement officer also will conduct a thorough interview to record as many details as possible and as precisely as possible.

If law enforcement determines that a crime occurred after concluding its investigation, then law enforcement will refer the matter to the district attorney. The district attorney will decide whether to pursue criminal prosecution; however, it is unusual for cases to proceed without the cooperation of the Complainant. Reporting the incident to law enforcement does not obligate the Complainant to cooperate with the district attorney's criminal prosecution. If criminal prosecution is pursued, however, the likelihood of success will be much higher if the Complainant reported and allowed evidence to be collected immediately after the incident of Sexual Assault or Relationship Violence.

## **3. How University Policies/Procedures Relate to Criminal Law/Procedures**

UTC will cooperate with law enforcement agencies if a Complainant decides to pursue the criminal process, to the extent permitted by law. However, UTC's policies and procedures relating to Prohibited Conduct (e.g., this policy) may differ in significant respects from Tennessee criminal law. A Complainant may seek resolution through UTC's procedures outlined in this policy, may pursue criminal action, may choose one but not the other, may choose both, or may choose neither. Neither law enforcement's determination whether to prosecute a Respondent nor the outcome of any criminal prosecution are determinative of whether Prohibited Conduct has occurred in violation of this policy. Proceedings under this policy may be carried out prior to, simultaneously with, or following civil or criminal proceedings off campus. UTC normally does not wait until a criminal investigation or proceeding is concluded before conducting its own investigation, implementing Interim Measures, or taking other appropriate action. Although UTC may need to delay temporarily the fact-finding portion of its investigation while law enforcement is gathering evidence, UTC will take Interim Measures to support the Complainant during such a delay. Decisions made or sanctions imposed by UTC are not affected as a result of criminal or civil charges against a Respondent arising from the same incident being dismissed, reduced, rejected, sustained, or not prosecuted. However, a Respondent's plea or a finding against a Respondent in a criminal or civil proceeding may, at UTC's discretion, be used by UTC in a UTC disciplinary proceeding.

### **C. Reporting Anonymously**

Persons may report Prohibited Conduct anonymously through the following methods:

1. To report an incident anonymously to UTCPD, fill out the Silent Witness Confidential Crime Reporting Form at [utc.edu/public-safety/forms/silent-witness.php](http://utc.edu/public-safety/forms/silent-witness.php). UTCPD generally will respond as described in Section III.B; however, the amount and level of detail of the information provided to UTCPD will affect how thoroughly UTCPD is able to respond to the report.
2. To report an incident anonymously to the Dean of Students Office and the Behavioral Intervention Team, complete the Public Incident Report form, which can be accessed through the Dean of Students Office's website: [utc.edu/dean-students/conduct/index.php](http://utc.edu/dean-students/conduct/index.php).
3. To report an incident anonymously to the Survivor Advocacy Program, complete the form at: [utc.edu/womens-center/transformation-project/report.php](http://utc.edu/womens-center/transformation-project/report.php).

Persons also may report a crime anonymously to the Chattanooga Police Department or the Hamilton County Sheriff's Department by calling the Crime Stoppers Hotline, (423) 698-3333.

Anonymous reporting is not an alternative to calling 911; in an emergency, call 911.

### **D. Confidential Resources**

Section IV.A describes options to communicate confidentially with someone regarding an incident of Prohibited Conduct.

### **E. UTC's Disclosure Obligations under Federal and Tennessee Law Relating to Reports of Prohibited Conduct**

#### **1. Clery Act**

Certain UTC employees, called Campus Security Authorities, have a duty to report certain incidents of Prohibited Conduct to UTCPD to comply with the Clery Act. Campus Security Authorities are not required to report personally identifiable information, but statistical information must be sent to UTCPD regarding the type of incident that occurred and its general location (e.g., on or off-campus, in the surrounding area, but no addresses are given to UTCPD) for publication in an annual report of crime statistics, called the Annual Security Report. A copy of the Annual Security Report can be found on the website of the Department of Public Safety, [utc.edu/public-safety/](http://utc.edu/public-safety/). Statistics published in the Annual Security Report help to provide the campus community with a clearer picture of the extent and nature of campus crime, but the statistics do not personally identify Complainants.

Complainants of Prohibited Conduct also should be aware that the Clery Act requires UTC to issue timely warnings for crimes reported to UTCPD or Campus Security Authorities that pose a substantial threat of bodily harm or danger to members of the campus community. UTC will undertake reasonable efforts to avoid disclosing a Complainant's name and other identifying information, while still providing enough information for community members to make safety decisions in light of the potential danger.

#### **2. FERPA**

In accordance with FERPA, personally identifiable information about a Complainant, Respondent, or Reporter who is a student that has been communicated to a Mandatory Reporter regarding Prohibited Conduct will be shared within UTC only with the Title IX Coordinator and those UTC employees who "need to know" in order to assist with UTC's response to the Prohibited Conduct. Personally identifiable information concerning a Complainant who is a student or a Respondent who is a student will not be disclosed by UTC to third parties unaffiliated with UTC

without the consent of the student except in response to a lawfully issued subpoena, court order, or as otherwise required or allowed by law. If, during UTC's investigation or resolution of Prohibited Conduct, a Respondent who is a student makes a request to review documents concerning the investigation, UTC will be required by FERPA to grant the Respondent's request to inspect and review records that relate specifically to him/her, but UTC will redact the Complainant's name and any other identifying information to the maximum extent allowed by law.

### **3. Tennessee Public Records Act**

Incident reports prepared by UTCPD for law enforcement purposes are generally considered public records under the Tennessee Public Records Act and are not protected by FERPA, which means UTC is obligated by law to make them available to any Tennessee citizen upon request unless the report is part of an ongoing criminal investigation. Local law enforcement agencies may also be required to make their records available under similar circumstances. In addition, investigative reports prepared by other UTC officials (e.g., the Office of Equity & Diversity) that do not contain personally identifiable student information also are generally considered public records under the Tennessee Public Records Act.

Upon request by a citizen of Tennessee, the Tennessee Public Records Act requires UTC to disclose the final results of any disciplinary proceeding conducted by UTC against a student who is an alleged perpetrator of any crime of violence, as that term is defined in 18 U.S.C. § 16, or a nonforcible sex offense, if UTC determines as a result of that disciplinary proceeding that the student committed a violation of UTC's rules or policies with respect to such crime or offense. "Final results" includes only the name of the student who committed the violation, the violation committed, and any sanction imposed by UTC on the student. The names of other students, such as a Complainant, are not disclosed.

### **4. Robert (Robbie) Nottingham Campus Crime Scene Investigation Act**

The Robert (Robbie) Nottingham Campus Crime Scene Investigation Act (Nottingham Act), Tennessee Code Annotated § 49-7-129, requires UTCPD to notify the Chattanooga Police Department upon UTCPD's receipt of a report from a victim alleging that any degree of rape has occurred on University property. The Nottingham Act requires UTCPD and the Chattanooga Police Department to participate in a joint investigation of the rape, with UTCPD leading the investigation.

The Nottingham Act also requires sexual assault programs and services on campus to report annually to UTCPD the number of requests for assistance received from persons who were raped on or in the vicinity of campus during the preceding calendar year. Personally identifiable information is not provided to UTCPD in connection with that report.

### **5. Due Process**

After UTC has formally accused a student or employee with violating University policy, the accused student or employee may have a constitutionally-protected due process right to be informed of the nature of the allegations against him/her, including the identity of the person who accused him/her of misconduct.

### **F. Take Back the Night and Other Public Awareness Initiatives; Research-Based Disclosures**

Public awareness events such as "Take Back the Night," candlelight vigils, protests, "survivor speak outs" or other forums in which students or employees disclose incidents of Prohibited Conduct, are not considered notice to UTC of Prohibited Conduct for purposes of triggering its obligation to investigate any particular incident(s). Such events may, however, inform the need for campus-wide education and prevention efforts, and UTC may provide information about Title IX rights at these events.

Disclosures of incidents of alleged Prohibited Conduct made by a University student during such student's participation as a subject in an Institutional Review Board-approved human subjects research protocol are not

considered notice to UTC of Prohibited Conduct for purposes of triggering its obligation to investigate any particular incident(s).

**G. False Reporting**

An accusation of Prohibited Conduct may have severe consequences for a Respondent. A Reporter who makes a report that is later found to have not been made in Good Faith may be subject to disciplinary action, up to and including termination of employment or dismissal from UTC. Similarly, a Respondent or other person who is later proven to have intentionally given false information during the course of a UTC investigation or disciplinary proceeding action may be subject to disciplinary action, up to and including termination of employment or dismissal from UTC.

## IV. Care And Support

This section of the policy outlines a variety of UTC and external resources and measures relating to Prohibited Conduct, many of which may be accessed 24 hours a day, seven days a week. In addition to the information provided in this section, information concerning options for Complainants following a sexual assault can be found at <https://rainn.org/get-information/sexual-assault-recovery>.

### A. Confidential Resources

The persons identified below are able to keep information communicated to them by a Complainant completely confidential and will not communicate personally identifiable information to UTC, law enforcement, or any other third party, unless required by law in the limited circumstances described in Appendix D or except as otherwise described in this Section IV.

Information communicated to a person identified as a confidential resource in this Section IV.A does not constitute notice or a report to UTC of an incident of Sexual Misconduct or Relationship Violence. In other words, a disclosure of Sexual Misconduct or Relationship Violence to a person identified in this Section IV.A (including a person supervised by them (e.g., nurses, assistants, and front-desk staff)) will not trigger a University response to an incident because the people identified in this Section IV.A are not Mandatory Reporters and do not report any information about an incident to the Title IX Coordinator, a Deputy Title IX Coordinator, UTCPD, or another Mandatory Reporter without the Complainant's permission. As a result, UTC generally will be unable to investigate the incident or pursue disciplinary action against the Respondent, or provide Interim Measures to the Complainant.

The persons identified in Section IV.A.1 can, however, help a Complainant explore options, provide information, including information on Interim Measures, and provide emotional support. A Complainant who at first requests confidentiality may later decide to report the incident to UTC and/or to law enforcement and have the incident fully investigated. The persons identified in Section IV.A.1 can provide the Complainant with assistance in making such reports if the Complainant asks them to do so.

Complainants may pursue the communication options outlined in this Section IV.A regardless of whether or not they choose to report the incident to UTC or law enforcement. In other words, the resources described in this policy are not mutually exclusive.

#### 1. UTC "Confidential Employees"

If a Complainant does not desire action by UTC and would like the details of the incident to be kept confidential, but desires to confide in someone employed by UTC, the Complainant may speak with the following persons, who are called "Confidential Employees" for purposes of this policy.

- An advocate in UTC's Survivor Advocacy Program. The Survivor Advocacy Program is part of the UTC Transformation Project's efforts to address Prohibited Conduct on campus. A Confidential Employee in the Survivor Advocacy Program may be contacted 24 hours a day, seven days a week by calling UTCPD at (423) 425-HELP (4357) and requesting the advocate on-call. Confidential Employees in the Survivor Advocacy Program:
  - Utilize a survivor-centered approach to create a support network for survivors and focus on minimizing the trauma experienced by survivors in a sensitive and proficient manner;
  - Provide information to survivors regarding Interim Measures and assist in coordinating Interim Measures for survivors (however, the Survivor Advocacy Program may be limited

in what Interim Measures it can facilitate if the Complainant wants to maintain confidentiality);

- Inform survivors of the right to report a crime to campus or local law enforcement and provide the survivor with assistance if the survivor wishes to do so;
  - Collaborate with the Title IX Coordinator and/or a Deputy Title IX Coordinator (with the permission of the survivor) after a report of Prohibited Conduct to ensure contact with and support of the survivor;
  - Coordinate and implement safety plans for survivors;
  - Answer survivors' questions about UTC's policies, procedures, or programs concerning Prohibited Conduct;
  - Provide the survivors with referrals to community resources; and
  - Advocate for the survivor during any law enforcement investigation and ensuing criminal proceeding.
- A licensed psychologist, professional counselor or social worker in UTC's Counseling and Personal Development Center (423-425-4438, from 8-5 on a normal weekday or contacting the on call counselor after hours);
  - A licensed medical professional in Student Health Services (423-425-2266 from 8-5 on a normal weekday);
  - Physicians or psychiatrists who are contracted through UTC's Counseling and Personal Development Center or Student Health Services;
  - A counselor with the Employee Assistance Program managed by Magellan Health Services (855-Here4TN (855-437-3486)) (option for employees); or
  - A sports team physician, sports team psychologist, or sports team psychiatrist (resource options for intercollegiate student-athletes only) (team physicians, psychiatrists and psychologists are UTC contractors, not employees).

A physician, psychologist, psychiatrist or social worker identified in this section is a confidential resource only if the student or employee is communicating with that person as a patient or client.

Confidential Employees may be required to report to the Title IX Coordinator and/or Deputy Title IX Coordinator(s) general information about incidents of Prohibited Conduct such as the nature, date, time, and general location of the incident and will take care to avoid reporting personally identifiable information about a Complainant. Confidential Employees may consult with the Complainant regarding what information needs to be withheld to protect the Complainant's identity.

## **2. Confidential Resources Outside of UTC**

Complainants of Prohibited Conduct also have options to communicate confidentially with someone who is not affiliated with UTC or law enforcement.

Complainants who desire to speak confidentially with someone not affiliated with UTC or law enforcement may contact one of the following:

- Partnership for Families, Children, and Adults Crisis Services      423-755-2700 (24HRS)  
[www.partnershipfca.com/www/docs/135//Crisis%20Services](http://www.partnershipfca.com/www/docs/135//Crisis%20Services)
- RAINN National Sexual Assault Crisis Hotline      800-656-HOPE (4673)  
[www.rainn.org/get-help/national-sexual-assault-hotline](http://www.rainn.org/get-help/national-sexual-assault-hotline)
- National Domestic Violence Hotline      800-799-SAFE (7233)  
[www.thehotline.org](http://www.thehotline.org)
- Love is Respect – National Dating Abuse Hotline      866-331-9474



[www.loveisrespect.org/](http://www.loveisrespect.org/)

- A personal attorney;
- A clergy member;
- A physician or Qualified Mental Health Professional who is not an employee or contractor of UTC; or
- A licensed marital or family therapist, licensed professional counselor, or certified clinical pastoral therapist.

Non-UTC counselors, advocates, and health care providers will generally maintain confidentiality unless state law otherwise requires (Appendix D) or the Complainant requests the disclosure and signs a consent or waiver form.

#### **B. Non-Confidential UTC Resources**

UTC employees/units identified below are trained to support Complainants. While not bound by confidentiality (i.e., they are Mandatory Reporters who are required to report knowledge of incidents of Prohibited Conduct to UTC and/or take other responsive action), these UTC employees/units will maintain the privacy of information shared by a Complainant within the limited circle of those UTC employees involved in UTC's response to an incident of Prohibited Conduct. When speaking with one of the resources below, Complainants are free to limit the details they share while they decide whether to report an incident to UTC.

The following UTC employees/units are generally available Monday-Friday from 8:00 a.m. to 5:00 p.m. on UTC business days:

- Title IX Coordinator 423-425-4255  
Stephanie Rowland  
Office of the Chancellor  
Department 5605  
615 McCallie Ave., 101 Founders Hall  
Chattanooga, TN 37403  
Fax: 423-756-5559  
[stephanie-rowland@utc.edu](mailto:stephanie-rowland@utc.edu)  
[utc.edu/sexual-misconduct](http://utc.edu/sexual-misconduct)
- Deputy Title IX Coordinator for Employees 423-425-5468  
Bryan Samuel  
Office of Equity and Diversity  
Department 5455  
720 McCallie Ave.  
Chattanooga, TN 37403  
[Bryan-Samuel@utc.edu](mailto:Bryan-Samuel@utc.edu)  
[utc.edu/equity-diversity](http://utc.edu/equity-diversity)
- Deputy Title IX Coordinator for Students 423-425-4761  
James S. Hicks, Dean of Students  
Office of the Dean of Students  
Department 1951  
615 McCallie Ave.  
Chattanooga, TN 37403  
[jim-hicks@utc.edu](mailto:jim-hicks@utc.edu)

- Deputy Title IX Coordinator for Athletics  
 Laura Herron  
 Senior Associate Athletics Director/Senior Woman Administrator  
 UTC Department 3503  
 615 McCallie Ave.  
 Chattanooga, TN 37403  
 Laura-Herron@utc.edu

423-425-4583
  
- Office of Student Conduct  
 399 University Center  
[utc.edu/dos/conduct/index.php](http://utc.edu/dos/conduct/index.php)

423-425-4301

The Office of Student Conduct investigates and resolves allegations of Sexual Misconduct, Relationship Violence, and Retaliation against students. Reports of Sexual Misconduct, Relationship Violence, and Retaliation concerning students may be filed with the Office of Student Conduct. The Dean of Students and the Associate Dean of Students for Student Conduct are Mandatory Reporters. Reports of Prohibited Conduct concerning students may be reported online at: [utc.edu/dos/conduct/index.php](http://utc.edu/dos/conduct/index.php).
  
- Office of Human Resources  
 UTC Department 3603  
 720 McCallie Ave.  
 Chattanooga, TN 37403  
[utc.edu/human-resources/](http://utc.edu/human-resources/)

423-425-4221
  
- UTC Police Department  
 400 Palmetto Street. Chattanooga, TN 37403  
[utc.edu/public-safety/](http://utc.edu/public-safety/)

423-425-4357

## 6. Medical Care

A Complainant may seek medical care at any time following Prohibited Conduct. The resources described in this Section IV.C are confidential resources, as described in Section IV.A.

Medical Care may be obtained from the following:

- Rape Crisis Center, 423-755-2700 (24 hours a day, seven days a week);
- UTC Student Health Services, 423-425-2337 (except for evenings, weekends, and holidays); or
- A local hospital (24 hours a day, seven days a week).

In cases of Sexual Assault or Relationship Violence, it is important for a Complainant to seek immediate medical attention to determine the presence of physical injury, address pregnancy concerns, determine the possibility of exposure to sexually transmitted diseases, and, if the Complainant later decides to pursue legal options, to obtain evidence to assist in criminal prosecution, a civil action, or in obtaining a civil protection order. The key to success in collecting physical evidence of a Sexual Assault is to collect the evidence as soon as possible after a Sexual Assault (ideally within 24 hours of a Sexual Assault but no later than 72 hours after a Sexual Assault). Prior to seeking medical care, Complainants of Sexual Assault should not change their clothing, bathe, shower, douche, use the bathroom, brush their teeth, drink liquids, wash their hands or face, or comb their hair. If Complainants change clothes, they should place all of their clothing that was worn at the time of the incident in a paper (not plastic) bag.

The collection of evidence for use in a criminal prosecution or an order of protection hearing relating to Sexual Assault can only be performed by trained personnel at the Partnership's Rape Crisis Center – physical examinations by other healthcare providers are likely to impede potential future legal remedies. In cases of Sexual Assault, a

medical professional usually will: examine the Complainant; provide appropriate medical treatment; collect evidence of the attack, such as hairs, fluids, and fibers; and, if applicable, talk with the Complainant about the prevention of venereal disease and pregnancy. A medical examination preserves evidence for forensic analysis in the event that a Complainant wishes to pursue a criminal prosecution or an order of protection. The medical examination likely will be performed by a sexual assault nurse examiner, a nurse who is specially trained to collect evidence in cases of Sexual Assault.

## **7. Interim Measures**

Upon receipt of a report of Prohibited Conduct, UTC will implement Interim Measures designed to eliminate the reported Prohibited Conduct and protect the persons involved in the matter (e.g., Complainant, Reporter, potential witnesses).

### **a) Availability of Interim Measures**

**Interim Measures are available:**

- Even if a Complainant does not want to report the incident to UTCPD, the Chattanooga Police Department, or any other law enforcement agency;
- Even if the Complainant has requested confidentiality or that UTC not pursue an investigation or discipline and UTC has determined that it can respect a Complainant's request for confidentiality (Section III.A.5), in which case UTC may be able to take measures to protect the Complainant while keeping the identity of the Complainant confidential, such as: providing support services to the Complainant; changing living arrangements or course schedules, assignments, or tests; and providing increased monitoring, supervision, or security at locations or activities where the Prohibited Conduct occurred;
- Prior to or during an investigation of Prohibited Conduct; and
- Prior to a final determination that Prohibited Conduct occurred.

### **b) Examples of Interim Measures**

**The following are examples of Interim Measures:**

- Informing the Complainant of the Complainant's rights under UTC's procedures for complaints against students or procedures for complaints against employees or other non-students;
- Informing the Complainant of the Complainant's right to report the incident to law enforcement for criminal investigation and prosecution and assisting the Complainant in reporting an incident to law enforcement, if the Complainant wants to report the incident;
- Issuing a no-contact directive to the Respondent, which prohibits the Respondent from having verbal, physical, or written contact with the Complainant for a definite or indefinite period of time (the Complainant may also receive a directive to not contact the Respondent);
- Issuing an interim suspension to the Respondent (if a student) prior to the conclusion of the investigation and resolution of a complaint of Prohibited Conduct (an interim suspension may be issued when the Vice Chancellor for Student Development (or 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 UTC);
- Putting a Respondent (if an employee) on leave, in accordance with other applicable University policies, prior to the conclusion of the investigation and resolution of a report of Prohibited Conduct;
- Providing medical and counseling services (for students);
- Exploring changes in living, transportation, dining, and working arrangements for the Complainant and the Respondent;
- Providing an escort to ensure that a Complainant who is a student can move safely between classes and activities;

- Arranging appointments for follow-up on-campus support services (if a student) or off-campus support services, such as those identified in Section IV;
- Exploring changes in class and extracurricular schedules, including adjustments so that the Complainant and the Respondent do not share the same classes (if both the Complainant and the Respondent are students);
- Assisting in communicating with faculty (for students);
- Reviewing any disciplinary action(s) taken against the Complainant to see if there is a causal connection between the Respondent's misconduct and the misconduct that may have resulted in the Complainant being disciplined;
- Providing academic support, including tutoring (for students); and
- Exploring the options of re-taking a course, dropping a course, or withdrawing for a semester without financial or academic penalty (for students).

**c) Determination of Interim Measures**

The specific Interim Measures implemented and the process for implementing those measures will vary depending on the facts of each case and the student or employee status of the Complainant and the Respondent. The Title IX Coordinator and/or Deputy Title IX Coordinator, in consultation with the UTC Survivor Advocacy Program or other appropriate UTC employees as needed (e.g., an employee who would be involved in implementing the Interim Measure being considered), will consider a number of factors in determining what Interim Measures UTC will implement, including, for example: the specific desire(s) expressed by the person who will benefit from the Interim Measures (e.g., the Complainant); whether the Complainant has requested confidentiality (Section III.A.5); the age of the persons involved; the severity or pervasiveness of the allegations; any continuing effects on the Complainant; whether the Complainant and Respondent share the same residence hall, dining hall, classes, extracurricular activities, transportation, or job location; and whether judicial measures have been taken to protect the Complainant (e.g., civil protection orders). In implementing Interim Measures, UTC attempts to minimize the burden on the Complainant while balancing the due process rights, if any, of the Respondent.

**d) Subsequent Communications with UTC Concerning Interim Measures**

UTC will strive to maintain consistent contact with the Complainant and the Respondent to ensure that all safety, emotional, and physical well-being concerns are being addressed. Persons are encouraged to report to the Title IX Coordinator concerns about the failure of another person to abide by the terms of an Interim Measure. UTC will take immediate and responsive action to enforce a previously implemented Interim Measure.

**8. Orders of Protection and Other Legal Remedies**

For assistance in pursuing orders of protection in Hamilton County Circuit Court and other legal remedies, a person may contact:

Hamilton County Circuit Court Clerk  
 500 Courthouse  
 625 Georgia Ave.  
 Chattanooga, TN 37402  
 423-209-6700

Domestic Violence Coalition of Chattanooga  
 423-875-0120  
<http://www.dvcchatt.8m.com/>

Southeast Tennessee Legal Services  
 821 Houston Street  
 Chattanooga, TN 37403  
 423-756-1028

[www.selegal.org/](http://www.selegal.org/)

A member of UTC's Survivor Advocacy Program can assist a Complainant with pursuing an order of protection and other legal remedies.

The Tennessee District Attorneys General Conference provides information for victims of Sexual Assault and Relationship Violence on multiple pages of its website:

- [www.tndagc.org/dv.htm](http://www.tndagc.org/dv.htm) (FAQ on orders of protection);
- [www.tndagc.org/vwh.htm](http://www.tndagc.org/vwh.htm) (resource describing the criminal justice system written specifically for those who need to understand how the system relates to them as victims/survivors and how perpetrators interact with the system); and
- [www.tndagc.com/vr.htm](http://www.tndagc.com/vr.htm) (description of victims' rights under Article I, Section 35 of the Tennessee Constitution relating to criminal cases).

## **V. UTC Procedures For Investigating And Resolving Reports Of Prohibited Conduct**

### **A. Summary of Student and Employee Procedures**

UTC has specific procedures for investigating and resolving reports of Prohibited Conduct based on the relationship of the Respondent to UTC and the type of Prohibited Conduct that was reported. Appendix E contains a chart that summarizes which complaint procedures will be used to resolve reports of Prohibited Conduct.

### **B. Standards Applicable to All Procedures**

The standards in this Section V.B apply to all procedures under this policy (i.e., Section V.C and Section V.D) for investigating and resolving reports of Prohibited Conduct, regardless of whether the Complainant or Respondent is a UTC student, UTC employee, or a person who is neither a student nor an employee.

#### **1. Determining the Appropriate Procedure**

The appropriate UTC procedure for investigating and resolving reports of Prohibited Conduct generally is determined by whether the Respondent is a student, employee, or a person who is neither a student nor an employee. In all of the procedures described below, UTC is committed to providing a prompt, thorough, and equitable investigation and resolution. A UTC investigation may occur alongside, rather than in lieu of, a law enforcement investigation. UTC does not use mediation to resolve incidents of Sexual Assault or Relationship Violence. The Title IX Coordinator will resolve issues regarding the appropriate investigatory and resolution procedure.

#### **2. Selecting an Investigator**

For each report of Prohibited Conduct to be investigated, UTC may select an investigator(s) of its choosing, provided that the investigator has specific training and experience investigating allegations of Prohibited Conduct. Any investigator(s) chosen to conduct the investigation must be impartial and free of any conflict of interest. The investigator(s) may be a UTC employee, a team of UTC employees, an external investigator(s) engaged to assist UTC in its fact-gathering, or a team of investigators that pairs an external investigator(s) with a UTC employee. Investigations of reports of Prohibited Conduct are usually performed by the Office of Equity and Diversity (if the Respondent is an employee or other non-student) or the Office of Student Conduct (if the Respondent is a student). A separate law enforcement investigation may be conducted by UTCPD.

#### **3. Preponderance of the Evidence Standard**

All investigations and proceedings, including disciplinary hearings, relating to Prohibited Conduct must be conducted using a "Preponderance of the Evidence" standard.

#### **4. Advisors and Support Persons**

Both the Complainant and the Respondent are entitled to bring a person of their choice to UTC meetings and hearings, but the person's role is limited to providing advice, guidance, and/or support for the Complainant or the Respondent, not acting as an advocate or participant (except in a TUAPA Hearing, in which a Complainant and a Respondent are entitled to have an attorney advocate on their behalf).

## **5. Training**

UTC employees and students participating in UTC investigations and disciplinary hearings involving Prohibited Conduct receive annual training on issues related to Prohibited Conduct and how to conduct an investigation and/or hearing in a way that protects the safety of Complainants and promotes accountability.

## **6. Complainants' Rights**

In addition to rights for Complainants described in other parts of this Section V and other sections of this policy, Complainants have the following rights in cases involving Prohibited Conduct:

- Notice concerning the procedure by which UTC will handle the Complainant's report and an opportunity to ask questions about UTC policies and procedures;
- A prompt, thorough, and equitable investigation of the Complainant's report;
- The same opportunity as the Respondent to present an explanation of the facts during UTC's investigation;
- Notice of the outcome of UTC's investigation;
- Notice of the date, time, and location of a disciplinary hearing; the right to have a disciplinary hearing closed to the public if a hearing involves a student Complainant or Respondent; and the right to request rescheduling of a disciplinary hearing for good cause;
- The same access as the Respondent to any information or documents that will be used by UTC during a disciplinary hearing, unless prohibited by law;
- To challenge the seating of any TUAPA administrative judge or hearing officer/examiner for good cause (determined at the discretion of the Chancellor/Agency Head); any member of a hearing board, panel, or committee for good cause (determined at the discretion of the chairperson of the hearing board, or, if the seating of the chairperson is challenged, then at the discretion of the majority of the hearing board; or any other hearing decision maker for good cause (determined at the discretion of UTC employee responsible for supervising the hearing board);
- The same opportunity as the Respondent to be present during a disciplinary hearing, present witnesses and other evidence, challenge the admissibility of evidence, and cross-examine adverse witnesses during the disciplinary hearing;
- To testify or remain silent in an investigation or disciplinary hearing;
- Not to be questioned directly by the Respondent during a disciplinary hearing or at any other time during UTC's investigation or resolution;
- To submit a written impact statement to a hearing board, panel, or committee, or other hearing decision maker, for consideration during the sanctioning phase of a disciplinary hearing, if the Respondent is found responsible for the charges, or to the Office of Student Conduct or other administrator for consideration during the sanctioning phase of an administrative hearing, if the Respondent admits responsibility for the charges;
- To be provided with the same or equivalent rights as the Respondent to challenge or appeal the decision of a UTC investigation or disciplinary hearing panel, board, or other decision maker.

## **7. Notice to Complainants and Respondents**

Unless prohibited by federal law, with respect to any UTC disciplinary hearing that arises from an allegation of Prohibited Conduct, UTC will provide simultaneous written notification to the Complainant and the Respondent of:

- The results of the hearing;
- UTC's procedures for the Complainant and the Respondent to appeal the results of UTC disciplinary hearing, if such procedures are available (any such procedures shall be available to both the Complainant and the Respondent);
- Any change to the results of the hearing before the results are final; and
- When the results of the hearing become final.

For the purposes of this Section V.A.7, "results" means any initial, interim, and final decision by any official or entity authorized to resolve disciplinary matters within UTC. The results include any sanctions imposed by UTC and include the rationale for the results.

Notice to the Complainant and the Respondent concerning other matters (e.g., appeals) shall be provided in writing simultaneously to the Complainant and Respondent.

## **8. Time Frames**

UTC will strive to meet the time frames described in this Section V. In each case, however, UTC will balance the need to complete a prompt investigation and resolution with the need to conduct a thorough investigation and a resolution that complies with due process. Thus, the actual time to complete an investigation and resolution may require a reasonable adjustment of the time frames in this policy depending on many factors, including, without limitation: the complexity of the allegations; the complexity of the investigation and resolution; the severity and extent of the alleged misconduct; the number of parties, witnesses, and the types of other evidence (e.g., forensic evidence) involved; the availability of the parties, witnesses, and evidence (e.g., forensic evidence); a request by a Complainant to conduct an investigation or resolution at a slower pace; the effect of a concurrent criminal investigation; any intervening UTC holidays, breaks, or other closures; and/or other unforeseen circumstances. In the event that the need arises to significantly adjust the time frames in this policy or those previously communicated to the Complainant and the Respondent for good cause, UTC will notify the Complainant and the Respondent in writing of the reason for the delay and the expected adjustment in time frames.

## **9. Prior Conduct, Including Sexual History**

In general, neither the Complainant's nor the Respondent's prior sexual history is relevant to the issue of whether Prohibited Conduct occurred and will not be considered as evidence during an investigation or hearing. However, when the Respondent contends that the Complainant gave Consent for a particular sexual act, the prior sexual history between the Complainant and the Respondent may be relevant to assess the manner and nature of communications between the parties. As noted in Section II.B.1, however, the mere existence of a current or previous dating, romantic, intimate, or sexual relationship with the other person does not allow a Respondent to imply or infer Consent. The Complainant's and the Respondent's prior sexual history may also be relevant in other limited circumstances, such as to show intent, motive, absence of mistake, or to explain an injury or physical finding.

## **10. Prompt, Fair, and Impartial Proceedings**

All activities related to a non-criminal resolution of a UTC disciplinary complaint, including, but not limited to, fact-finding investigations, formal or informal meetings, and hearings conducted by UTC under this policy shall be



prompt, fair, and impartial. Those activities shall be conducted in a manner that: (1) is consistent with UTC's policies and transparent to the Complainant and the Respondent; (2) includes timely notice of meetings at which the Complainant or the Respondent, or both, may be present; and (3) provides timely access to the Complainant, the Respondent, and appropriate officials to any information that will be used after the fact-finding investigation but during informal and formal disciplinary meetings and hearings. Decision makers concerning appeals shall not have a conflict of interest or bias for or against the Complainant or the Respondent.

**C. Procedures for Investigating and Resolving Reports Involving a Respondent Who is a UTC Employee or Other Non-Student**

This Section V.C describes procedures for investigating and resolving a report of Sexual Assault, a Sex Offense Crime, Relationship Violence, a Relationship Violence Crime, or Stalking involving a Respondent who is an employee or other non-student. A report of Sex Discrimination (e.g., Sexual Harassment) that does not include Sexual Assault, a Sex Offense Crime, a Relationship Violence Crime, Relationship Violence, or Stalking involving a Respondent who is an employee or other non-student generally will be resolved by the Office of Equity & Diversity in accordance with UTC's Discrimination Complaint Procedure.

**1. Meeting (Communication) with the Complainant**

After receiving a report of Prohibited Conduct from a Reporter or a Mandatory Reporter, the Title IX Coordinator will initiate immediate and appropriate steps by UTC to: inform the Complainant about this policy, including the Complainant's rights, and give the Complainant an opportunity to ask questions; implement Interim Measures; and, subject to a Complainant's request for confidentiality (Section III.A.5), investigate and resolve the matter promptly, thoroughly, and equitably in accordance with the procedures outlined in this section if, based on an initial assessment, the alleged conduct meets the definition of Prohibited Conduct. Subject to UTC's legal disclosure obligations, information about the report will be shared only as reasonably necessary with investigators, witnesses and the Respondent. The Title IX Coordinator will designate one or more persons to investigate the report, which most often will be an employee in the Office of Equity and Diversity.

**2. Investigation and Resolution**

Unless UTC determines that it will not investigate a report of Prohibited Conduct following a Complainant's request for confidentiality (Section III.A.5), the investigator selected by UTC will conduct the investigation in a manner appropriate in light of the circumstances of the case, which will typically include interviews with the Complainant, the Respondent, and any witnesses. As part of the investigation, UTC will provide an equal opportunity for the Complainant and the Respondent to be heard, to submit information, and to identify witnesses and other evidence. The interviews will be supplemented by the gathering of any physical, documentary, or other evidence, as appropriate and available. The investigation is designed to provide a fair and reliable gathering of the facts. The investigation will be thorough and equitable, and all persons will be treated with appropriate sensitivity and respect. The investigation will be conducted in a manner that is respectful of individual privacy concerns.

UTC's investigator will make written findings and recommendations (including a statement outlining the basis for them) and transmit the findings and recommendations to the appropriate UTC administrator. The findings and recommendations will be made available simultaneously to the Complainant and the Respondent. The appropriate administrator will review the investigator's findings and recommendations, make a determination whether this policy was violated (and, if so, what disciplinary and/or other corrective actions should be imposed), and will provide simultaneous written notification of the determination to the Complainant and the Respondent.

UTC strives to complete the procedures in this Section V.B.2 within 60 calendar days of the receipt of a report of Prohibited Conduct.

### **3. Appeals**

A Respondent who is an employee who is not satisfied with the administrator's determination may appeal in accordance with applicable University policies and procedures, including, without limitation, University of Tennessee System Human Resources Policy 0525 (Disciplinary Action), University of Tennessee System Human Resources Policy 0640 (Grievances), and the University of Tennessee, Chattanooga Faculty Handbook. A Complainant shall be provided the same opportunity as a Respondent to submit information to the decision maker on appeal.

Within fifteen (15) calendar days after receipt of the administrator's determination, a Complainant who is not satisfied with the determination may appeal in writing to the next higher administrative level. UTC will inform the Complainant in writing of the person to whom an appeal may be made. Any administrator who receives a Complainant's appeal shall make a decision on the appeal within ten (10) calendar days of the administrator's receipt of the appeal.

Decision makers concerning appeals must be impartial and free of any conflict of interest.

Decisions on appeals shall be provided in writing simultaneously to the Complainant and Respondent.

### **4. Disciplinary or Other Corrective Actions**

Disciplinary actions with respect to an employee found to have committed Prohibited Conduct can include, without limitation: termination, demotion, suspension without pay, and/or oral or written corrective action. When the person found to have committed Prohibited Conduct is neither a student nor an employee, UTC's corrective action(s) will vary based on UTC's ability to implement corrective action(s).

#### **D. Procedure for Investigating and Resolving a Report Involving a Respondent Who is a UTC Student**

This Section V.D describes procedures for investigating and resolving reports of Prohibited Conduct involving a Respondent who is a student.

#### **1. Meeting (Communication) with the Complainant**

After receiving a report of Prohibited Conduct from a Reporter or a Mandatory Reporter, the Title IX Coordinator, a Deputy Title IX Coordinator, or an employee of the Division of Student Development will initiate immediate and appropriate steps by UTC to: have an appropriate UTC employee meet with or otherwise communicate with the Complainant; in cases of Sexual Assault, Relationship Violence, or Stalking, provide a Complainant with a copy of this policy and/or another written publication approved by the Title IX Coordinator to inform the Complainant of the Complainant's rights under this policy (if that has not already been done by a Mandatory Reporter); evaluate whether Interim Measures need to be implemented and assist with the implementation of Interim Measures; and, subject to a Complainant's request for confidentiality (Section III.A.5), initiate the investigation and resolution procedures outlined in this section if, based on an initial assessment, the alleged conduct meets the definition of Prohibited Conduct. The Title IX Coordinator, a Deputy Title IX Coordinator, and/or an employee of the Division of Student Development also can assist a Complainant in reporting the incident to law enforcement.

#### **2. Investigation**

Unless UTC determines that it will not investigate a report of Prohibited Conduct following a Complainant's request for confidentiality (Section III.A.5), the investigator(s) selected by UTC will conduct the investigation in a manner appropriate in light of the circumstances of the case, which will typically include interviews with the Complainant, the Respondent, and any witnesses. As part of the investigation, UTC will provide an equal opportunity for the Complainant and the Respondent to be heard, to submit information, and to identify witnesses and other evidence. The interviews will be supplemented by the gathering of any physical, documentary, or other

evidence, as appropriate and available. The investigation is designed to provide a fair and reliable gathering of the facts. The investigation will be thorough and equitable, and all persons will be treated with appropriate sensitivity and respect. The investigation will be conducted in a manner that is respectful of individual privacy concerns. Investigations usually will be conducted by the Office of Student Conduct.

The investigator(s) will provide simultaneous written notice of the outcome of the investigation to the Complainant and the Respondent. UTC strives to complete the procedures in this Section V.D.2 within 60 calendar days of the receipt of a report of Prohibited Conduct.

### **3. Resolution**

If UTC determines after an investigation that a student has engaged in Prohibited Conduct, then UTC will take prompt and effective steps reasonably calculated to end the misconduct, prevent the misconduct from recurring, and address its effects. One of those steps likely will involve the Office of Student Conduct charging the Respondent with a violation of the Standards of Conduct for students and resolve the matter in accordance with Section V.B and UTC's student disciplinary regulations and procedures, a complete copy of which can be found in the UTC Student Handbook. A Respondent accused of committing Prohibited Conduct may accept responsibility for the disciplinary charge(s) and accept the proposed disciplinary penalty(s), or the Respondent may contest the accusation(s) and/or disciplinary penalty(s) either through a hearing before the Student Conduct Board or a University hearing officer, following the procedures set forth in the UTC Student Handbook, or a TUAPA Hearing.

UTC strives to conduct disciplinary hearings concerning Prohibited Conduct within ten (10) calendar days of the notice to the Complainant and Respondent of the outcome of UTC's investigation. UTC strives to provide notice of the decision of the Student Conduct Board or an administrative judge or hearing officer/examiner within ten (10) calendar days after the hearing.

Decisions concerning resolutions shall be provided in writing simultaneously to the Complainant and Respondent. Before a Respondent accused of committing Prohibited Conduct accepts responsibility for a disciplinary charge(s) and accepts a proposed disciplinary penalty(s), the Complainant shall be offered an opportunity to appeal the proposed disciplinary penalty, as described in accordance with Section V.D.4.

### **4. Appeals**

Appeal by the Complainant of a Decision of the Office of Student Conduct to Not Charge a Respondent with Violating the Standards of Conduct. A Complainant may appeal a decision of the Office of Student Conduct to not charge a Respondent with violating UTC's Standards of Conduct to the Vice Chancellor for Student Development by filing a written request for appeal within fifteen (15) calendar days after receipt of the decision of the Office of Student Conduct. The Vice Chancellor for Student Development may affirm the decision of the Office of Student Conduct, reverse the decision and direct the Office of Student Conduct to charge the Respondent with violating the Standards of Conduct, or remand the matter for additional investigation or consideration. The Vice Chancellor for Student Development will issue a decision in writing, sent to the Complainant and the Respondent simultaneously, within ten (10) calendar days of receipt of the appeal. The decision of the Vice Chancellor for Student Development is final.

Appeal by the Complainant of a Proposed Disciplinary Penalty. In a case in which the Respondent has indicated a willingness to accept responsibility for violating a Standard of Conduct, but the Complainant is not satisfied with the disciplinary penalty proposed by the Office of Student Conduct for the Respondent's violation of the Standard of Conduct, the Complainant will have the opportunity to appeal to the Vice Chancellor for Student Development by filing a written request for appeal within fifteen (15) calendar days after notification of the proposed disciplinary penalty by UTC. The Vice Chancellor for Student Development may affirm the disciplinary penalty proposed by the Office of Student Conduct, modify the disciplinary penalty proposed by the Office of Student Conduct, or remand the matter for additional consideration by the Office of Student Conduct. The Vice Chancellor for Student Development will issue a decision in writing, sent to the Complainant and the Respondent simultaneously, within ten (10) calendar days of receipt of the request for review. The decision of the Vice Chancellor for Student

Development is final.

Appeal by either the Complainant or the Respondent of a Decision of a Student Conduct Board or University Hearing Officer. In cases involving Sexual Assault or Relationship Violence heard by a Student Conduct Board or a University hearing officer, the timeframes for appeals shall be modified in order to accomplish the goal of resolving all appeals within thirty (30) calendar days of the written decision of the Student Conduct Board or University hearing officer. To accomplish that goal, appeals of decisions of a Student Conduct Board or a University hearing officer to the Vice Chancellor for Student Development shall be submitted in writing to the Office of Student Conduct within five (5) calendar days of the written decision of the Student Conduct Board or UTC hearing officer. The Vice Chancellor for Student Development shall issue a written decision within ten (10) calendar days of the Office of Student Conduct's receipt of the appeal. The decision of the Vice Chancellor for Student Development is final.

Appeal by UTC, the Complainant, or the Respondent of an Initial Order in a TUAPA Hearing. An appeal of an initial order of in a TUAPA Hearing shall be filed with the Chancellor/Agency Head within fifteen (15) calendar days after entry of the initial order. In cases involving Sexual Assault or Relationship Violence, the Chancellor/Agency Head will strive to issue a final order or an order remanding the matter for further proceedings within ten (10) calendar days after the filing of an appeal.

Decisions on Any Type of Appeal. Decisions on appeals shall be provided in writing simultaneously to the Complainant and Respondent.

## **5. Disciplinary Sanctions and Other Remedial and Protective Measures**

Following a final determination under UTC procedures that a student committed Prohibited Conduct (e.g., after all appeals have been exhausted), UTC will take prompt and effective steps reasonably calculated to end the misconduct, prevent the misconduct from recurring, and address its effects. Such steps likely will include imposing one or more of the following disciplinary sanctions: permanent dismissal, indefinite suspension, suspension for a specific period of time, disciplinary probation, disciplinary reprimand, restitution, education, loss of privilege, and/or warning. In addition to imposing disciplinary sanctions, UTC may implement other remedial and protective actions, including: issuing a no-contact directive to the Respondent; providing medical and counseling services to the Complainant (for a student Complainant); exploring changes in living, transportation, dining, and working arrangements for the Complainant and the Respondent; providing an escort to ensure that the Complainant can move safely between classes and activities (for a student Complainant); exploring changes in class and extracurricular schedules, including adjustments so that the Complainant and the Respondent do not share the same classes (for a student Complainant); assisting the Complainant in communicating with faculty (for a student Complainant); providing academic support for the Complainant, including tutoring (for a student Complainant); and exploring options for re-taking a course, dropping a course, or withdrawing for a semester without financial or academic penalty (for a student Complainant). UTC will take prompt and effective steps reasonably calculated to end the misconduct, prevent the misconduct from recurring, and address its effects.

## VI. Requirements And Guidelines For Mandatory Reporters

### A. Required Actions

A Mandatory Reporter who receives information concerning an incident of Prohibited Conduct shall:<sup>8</sup>

1. Assist the Complainant with obtaining medical assistance (if needed or requested) or accessing other on- or off-campus resources (if requested);
2. Encourage the Complainant to report the incident to law enforcement and assist the Complainant in contacting law enforcement if requested by the Complainant; and
3. Report the incident to UTC:
  - Evaluate whether University Safety Policy 0575 applies because the incident involves suspected child abuse or child sexual abuse (if so, comply with the reporting requirements of that policy); or
  - If University Safety Policy 0575 does not apply, report the incident to the Title IX Coordinator or a Deputy Title IX Coordinator promptly after receiving notice of the incident (no later than 48 hours after receiving the report<sup>9</sup>).<sup>10</sup> The Mandatory Reporter shall communicate: (1) details known about the alleged incident that UTC will need to determine what happened – including the names of the Complainant, Reporter, and Respondent(s), any witnesses, and any other relevant facts, including the date, time and specific location of the alleged incident; and (2) if applicable, communicate to the Title IX Coordinator or a Deputy Title IX Coordinator that a Complainant has requested that UTC maintain confidentiality (Section III.A.5).

Deputy Title IX Coordinators must inform the Title IX Coordinator of all reports of Prohibited Conduct. In a case involving Sexual Assault, Relationship Violence, or Stalking, the Title IX Coordinator must ensure that a copy of this policy or another written publication approved by the Title IX Coordinator has been provided to the Complainant to inform the Complainant of their rights under this policy.

Complainants who are Mandatory Reporters are not required to report or take any other action identified in this section with respect to Prohibited Conduct to which they have been subjected.

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<sup>8</sup> In addition to the responsibilities of a Mandatory Reporter described in this Section VI, the Title IX Coordinator, Deputy Title IX Coordinators, certain employees in the Division of Student Development, and UTCPD also are responsible for carrying out responsibilities described in other sections of this policy. The Title IX Coordinator, Deputy Title IX Coordinators, the Division of Student Development, and/or UTCPD may develop internal procedures for the purposes of implementing this policy, as long as the procedures do not conflict with this policy.

<sup>9</sup> If the end of the 48 hour reporting window falls on a weekend or a University holiday, then the Mandatory Reporter should report the incident as soon as possible on the next University business day.

<sup>10</sup> A Mandatory Reporter may also inform his/her supervisor of the incident. With the prior approval of the Title IX Coordinator, a University unit may adopt a policy that requires a Mandatory Reporter in the unit to report an incident of Sexual Misconduct or Relationship Violence to his/her supervisor or other designee within the unit, who, in lieu of the Mandatory Reporter who received notice of the incident, shall promptly report the incident to the Title IX Coordinator or a Deputy Title IX Coordinator.

## **B. Recommended Actions**

Before a person reveals information to the Mandatory Reporter that the person may wish to keep confidential, a Mandatory Reporter should use his/her best efforts to ensure that the person understands:

1. The Mandatory Reporter's obligation to report the names of a Respondent and a Complainant involved in the alleged Prohibited Conduct, as well as other relevant facts regarding the alleged incident, to UTC;
2. A Complainant's ability to share information confidentially with certain on- and off-campus resources (Section IV.A);
3. A Complainant's option under this policy to request that UTC maintain confidentiality (Section III.A.5), if the person indicates that he/she wants to disclose information to the Mandatory Reporter but wishes to maintain confidentiality;
4. If the person indicates hesitancy to report an incident to UTC, inform the person that UTC prohibits Retaliation and will not only take steps to prevent Retaliation but also take strong responsive action if Retaliation occurs.

A Mandatory Reporter who receives information from a Complainant concerning an incident of Prohibited Conduct should:

1. Provide emotional support to the Complainant;
2. Encourage the Complainant to preserve any physical evidence (e.g., if possible, the Complainant should not shower, bathe, douche, change clothes, brush his/her teeth, or comb his/her hair);
3. Inform the Complainant that the Mandatory Reporter will be reporting the incident to the Title IX Coordinator or a Deputy Title IX Coordinator, one of whom (or their designee) will be contacting the Complainant to provide further guidance and assistance; and
4. Provide a Complainant with a copy of this policy or another written publication approved by the Title IX Coordinator, if available, to inform the Complainant of the Complainant's rights under this policy.

## **C. Prohibited Actions**

A Mandatory Reporter who receives notice of an incident of Prohibited Conduct shall not:

1. Guarantee to a Complainant that the Mandatory Reporter will keep information confidential;
2. Share information about the incident with a person who does not have a UTC-related need to know;
3. Share personally identifiable information about the incident with law enforcement (including UTCPD) without the Complainant's consent; and/or
4. Investigate or otherwise attempt to resolve reports of Prohibited Conduct without the approval of the Title IX Coordinator (this provision does not apply to UTCPD), other than taking an action required or recommended in Section VI.A-B.

D. UTCPD

UTCPD shall provide the Title IX Coordinator with access to its investigation notes and findings as necessary for UTC's non-law enforcement investigation, as long as providing the notes and findings would not compromise UTCPD's law enforcement investigation.

When UTC's non-law enforcement investigation of a report of Prohibited Conduct occurs concurrently with a law enforcement investigation of the same incident, UTCPD shall not cause UTC's non-law enforcement investigation to be delayed pending the outcome of UTCPD's law enforcement investigation, except for the collection of evidence.

## **VII. Other University Policies/Procedures; Due Process; Academic Freedom and First Amendment Rights**

### **A. Child Abuse and Child Sexual Abuse**

University of Tennessee System Safety Policy 0575 (“Programs for Minors”) takes precedence over this policy with respect to reporting suspected child abuse and child sexual abuse. Except for Safety Policy 0575 and as otherwise provided in this policy, this policy takes precedence over other University policies and procedures concerning Prohibited Conduct in the event of a conflict.

### **B. Student Policies and Procedures**

The Standards of Conduct for students can be found in the UTC Student Handbook. The Standards of Conduct for students prohibits students from engaging in sexual misconduct, relationship violence, stalking, and retaliation. In the event of a conflict between this policy and the UTC Student Handbook, this policy shall control. If this policy does not supply a substantive or procedural rule relating to an issue, then the UTC Student Handbook shall supply the rule.

### **C. Employee Policies and Procedures**

In the event of a conflict between this policy and another University employee policy or procedure, this policy shall control. If this policy does not supply a substantive or procedural rule relating to an issue, then another employee policy or procedure, if applicable, may supply the rule. The following is a non-exclusive list of other policies and procedures that in some cases may apply to the investigation and/or resolution of a report of Prohibited Conduct involving a University employee:

- University of Tennessee Board of Trustees Policy 0006 (Policies Governing Academic Freedom, Responsibility, and Tenure)
- University of Tennessee, Chattanooga Faculty Handbook
- University of Tennessee System Human Resources Policy 0160 (Termination of Employment)
- University of Tennessee System Human Resources Policy 0220 (Equal Employment Opportunity and Affirmative Action)
- University of Tennessee System Human Resources Policy 0355 (Leave of Absence)
- University of Tennessee System Human Resources Policy 0525 (Disciplinary Action)
- University of Tennessee System Human Resources Policy 0580 (Code of Conduct)
- University of Tennessee System Human Resources Policy 0640 (Grievances)

### **D. Tennessee Uniform Administrative Procedures Act**

Chapter 1720-1-5 of the Rules of the University of Tennessee sets forth the University’s procedures for conducting a contested case hearing pursuant to the Tennessee Uniform Administrative Procedures Act, Tennessee Code Annotated, § 4-5-301 *et seq.* In a case involving alleged Sexual Misconduct, Relationship Violence, or Stalking, the administrative judge or hearing examiner shall modify those procedures when required to comply with federal law, including without limitation, Title IX and the Clery Act.

### **E. Consensual Relationships**

Consensual romantic or sexual relationships between members of the UTC community are subject to other University policies. For example, UTC’s policy on consenting romantic or sexual relationships between faculty and students can be found in Section 5.12 of the UTC Faculty Handbook. Even if a romantic or sexual relationship between members of the UTC community may begin as consensual, the relationship may evolve into a situation



that leads to allegations of Prohibited Conduct. In addition, depending on the circumstances, a consensual sexual relationship may also violate other University policies, including, without limitation, University of Tennessee System Human Resources Policies 0220 ("Equal Employment Opportunity Affirmative Action and Diversity"), 0280 ("Sexual Harassment"), and 0580 ("Code of Conduct").

**F. Academic Freedom and First Amendment Rights**

This policy is not intended to, and will not be used to, infringe on academic freedom or to censor or punish students, faculty, or staff who exercise their First Amendment rights, even though such expression may be offensive or unpleasant.

**G. Due Process**

This policy is designed to comply with Title IX while also ensuring that constitutionally-required due process is provided to Respondents who are accused of violating this policy.

## **VIII. Prevention And Awareness Programs**

UTC implements comprehensive, intentional, and integrated programming, initiatives, strategies, and campaigns intended to prevent Prohibited Conduct by and against members of the UTC community. UTC intends that its Prevention Programs: (1) be culturally relevant, inclusive of diverse communities and identities, sustainable, responsive to community needs, and informed by research or assessed for value, effectiveness, or outcome; and (2) consider environmental risk and protective factors as they occur on the individual, relationship, UTC, community, and societal levels. Prevention Programs include both Primary Prevention Programs, Primary Awareness Programs, and Ongoing Prevention and Awareness Campaigns.

### **A. Primary Prevention Programs**

UTC implements programming, initiatives, and strategies informed by research or assessed for value, effectiveness, or outcome that are intended to stop Prohibited Conduct before it occurs through the promotion of positive and healthy behaviors that foster healthy, mutually respectful relationships and sexuality, encourage safe Bystander Intervention, and seek to change behavior and social norms in healthy and safe directions.

UTC implements programs for incoming students and new employees that inform them about:

- This policy, including: UTC's prohibition against Prohibited Conduct; the definitions of Tennessee Sex Offense Crimes and Tennessee Relationship Violence Crimes; the definition of consent with respect to crimes relating to sexual activity in the State of Tennessee; and the information that is included in this policy in accordance with 34 C.F.R. § 668.46(b)(11) and 34 C.F.R. § 668.46(k)(2);
- Bystander Intervention; and
- Risk Reduction.

Questions about UTC's current Primary Prevention Programs should be directed to the Title IX Coordinator, a Deputy Title IX Coordinator, or the UTC Women's Center.

### **B. Primary Awareness Programs**

UTC implements comprehensive, intentional, and integrated community-wide or audience-specific programming, initiatives, and strategies that increase audience knowledge and share information and resources to prevent Prohibited Conduct, promote safety, and reduce the perpetration of Prohibited Conduct.

Questions about UTC's Primary Awareness Programs Questions should be directed to the Title IX Coordinator, a Deputy Title IX Coordinator, or the UTC Women's Center.

### **C. Ongoing Prevention and Awareness Campaigns**

UTC implements programming, initiatives, and strategies for students and employees that are sustained over time and focus on increasing understanding of topics relevant to and skills for addressing Prohibited Conduct using a range of strategies with audiences throughout UTC and including information about:

- This policy, including: UTC's prohibition against Prohibited Conduct; the definitions of Tennessee Sex Offense Crimes and Tennessee Relationship Violence Crimes; the definition of consent with respect to crimes relating to sexual activity in the State of Tennessee; and the information that is included in this policy in accordance with 34 C.F.R. § 668.46(b)(11) and 34 C.F.R. § 668.46(k)(2);
- Bystander Intervention; and
- Risk Reduction.

Questions about UTC's ongoing prevention and awareness campaigns should be directed to the Title IX Coordinator, a Deputy Title IX Coordinator, or the UTC Women's Center.

## Appendix A: Definitions

In addition to the terms defined in Section II, the following definitions apply for the purposes of this policy:

- (1) Bystander Intervention: Safe and positive options that may be carried out by an individual(s) to prevent harm or intervene when there is a risk of Prohibited Conduct. Bystander Intervention includes: recognizing situations of potential harm; understanding institutional structures and cultural conditions that facilitate violence; overcoming barriers to intervening; identifying safe and effective intervention options; and taking action to intervene. More information about Bystander Intervention can be found at: <http://www.utc.edu/step-up/>.
- (2) Campus Security Authorities: Individuals from whom UTC collects certain crime statistics for purposes of the Clery Act. A list of the job titles of UTC's Campus Security Authorities can be found at: <http://www.utc.edu/public-safety/clery/campus-security-authority-training.php>.
- (3) Clery Act: The Jeanne Clery Disclosure of Campus Security and Campus Crime Statistics Act, 20 U.S.C. § 1092(f), as amended by the Violence Against Women Reauthorization Act of 2013. More information about the Clery Act, including UTC's Annual Security Report, can be found at: <http://www.utc.edu/public-safety/>.
- (4) Clery Geography: Clery Geography means property for which UTC is required to report crime statistics pursuant to the Clery Act.
- (5) Complainant: A person who may have been subjected to Prohibited Conduct, regardless of whether that person makes a report or seeks action under his policy. This term does not imply pre-judgment concerning whether the person was subjected to Prohibited Conduct.
- (6) Deputy Title IX Coordinator(s): The person(s) identified as Deputy Title IX Coordinators in Section I.B.
- (7) FERPA: The Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g.
- (8) Interim Measures: Reasonable and appropriate measures, as determined by UTC, which are designed to eliminate Prohibited Conduct and protect the persons involved in the matter (e.g., Complainant, Reporter, potential witnesses).
- (9) Mandatory Reporter: A UTC employee identified in Section III.A (non-law enforcement), Section III.B.1 (UTCPD), Appendix B, and/or Appendix C as an option for reporting Prohibited Conduct to UTC. Notwithstanding anything in this policy to the contrary, Mandatory Reporters do not include persons who are prohibited in the situation from reporting an incident by a law or mandatory ethical standard imposed by their profession (e.g., a Qualified Mental Health Professional who learns of the information in the course of a privileged provider-patient relationship).
- (10) Office of Student Conduct: UTC's Office of Student Conduct, which is part of the Dean of Students Office.
- (11) Preponderance of the Evidence: The amount of evidence that causes one to conclude that an allegation is probably true (i.e., more likely true than not true). If the evidence on a particular allegation is equally balanced, then that allegation has not been proven by a preponderance of the evidence. (*The source of this definition is Tennessee Pattern Jury Instruction 2.40.*)

- (12) Prohibited Conduct: Sexual Misconduct, Relationship Violence, Stalking, and/or Retaliation.
- (13) Qualified Mental Health Professional: A person who is licensed in the state of Tennessee, if required for the profession, and who is: a psychiatrist; physician with expertise in psychiatry as determined by training, education, or experience; psychologist with health service provider designation; psychological examiner or senior psychological examiner; licensed master's social worker with two years of mental health experience or licensed clinical social worker; marital and family therapist; nurse with a master's degree in nursing who functions as a psychiatric nurse; professional counselor; or if the person is providing service to children, any of the above educational credentials plus mental health experience with children. *(The source of this definition is Tennessee Code Annotated § 33-1-101.)*
- (14) Registered Student Organization: A student organization registered with UTC in accordance with University rules.
- (15) Relationship Violence Crime(s): A term that encompasses both Clery Act Relationship Violence Crimes and Tennessee Relationship Violence Crimes, which are defined below:
1. Clery Act Relationship Violence Crimes: The Clery Act requires UTC to report certain statistics for the following crimes of relationship violence that occur on Clery Geography in UTC's Annual Security Report:
    - a. Dating Violence: This term is defined in Section II.A.
    - b. Domestic Violence: This term is defined in Section II.A.
    - c. Stalking (Clery Act): This term is defined in Section II.A.
  2. Tennessee Relationship Violence Crimes: The crimes below are crimes in the State of Tennessee that are the closest equivalents to Clery Act Relationship Violence Crimes:
    - a. Assault: The crime of assault in Tennessee is defined in Tennessee Code Annotated § 39-13-101.
    - b. Domestic Assault: The crime of Domestic Assault in Tennessee is defined in Tennessee Code Annotated § 39-13-111.
    - c. Stalking (Tennessee Crime): The crime defined in Tennessee Code Annotated § 39-17-315.
    - d. Violating an Order of Protection Relating to Domestic Abuse or Stalking: In Tennessee, a domestic abuse victim or stalking victim who has been subjected to, threatened with, or placed in fear of, domestic abuse or stalking may seek relief by filing a sworn petition alleging domestic abuse or stalking by the Respondent. Such a petition must be filed in the county where the Respondent resides or the county in which the domestic abuse, stalking, or sexual assault occurred. If the Respondent is not a resident of Tennessee, the petition may be filed in the county where the Complainant resides. Tennessee law provides criminal penalties for violations of certain orders of protection. More information

on Tennessee's law on orders of protection can be found in Tennessee Code Annotated § 36-3-601 *et seq.*

- (16) Reporter: A person who communicates a concern to a Mandatory Reporter regarding the occurrence of Prohibited Conduct. A Reporter need not be a Complainant.
- (17) Respondent: A person or registered student organization who has been accused of committing Prohibited Conduct. This term does not imply pre-judgment concerning whether the person or registered student organization committed Sexual Misconduct and/or Relationship Violence.
- (18) Risk Reduction: Options designed to decrease perpetration and bystander inaction, and to increase empowerment for Complainants in order to promote safety and to help individuals and communities address conditions that facilitate violence. More information about Risk Reduction can be found in UTC's Annual Security Report.
- (19) Sex Discrimination: Conduct directed at a specific person or a group of identifiable persons that subjects the person or group to treatment that adversely affects their employment, education, or ability to participate in or benefit equally in any UTC program or activity, on account of sex. Sex Discrimination may include acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex or sex-stereotyping, even if those acts do not involve conduct of a sexual nature. A complaint of Prohibited Conduct will be treated as a complaint of Sex Discrimination in violation of Title IX if it was based on the sex of the Complainant.
- (20) Sex Offense(s): Any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent.
- (21) Sexual Offense Crime(s): A term that encompasses both Clery Act Sex Offense Crimes and Tennessee Sex Offense Crimes, which are defined below:
  - 1. Clery Act Sex Offense Crimes: The Clery Act requires UTC to report certain statistics for the following crimes of sexual violence that occur on Clery Geography in UTC's Annual Security Report:
    - a. Fondling: The touching of a private body part of another person for the purpose of sexual gratification, without the Consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity.
    - b. Incest: Sexual Intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by Tennessee law.
    - c. Rape (Clery Act): The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the Consent of the victim.
    - d. Sexual Assault (Clery Act): An act that meets the definition of Rape (Clery Act), Fondling, Incest, or Statutory Rape (Clery Act).

- e. Statutory Rape (Clery Act): Sexual Intercourse with a person who is under the statutory age of Consent.
2. Tennessee Sex Offense Crimes: The crimes below are crimes in the State of Tennessee that are the closest equivalents to Clery Act Sex Offense Crimes:
- a. Aggravated Rape: The crime of Aggravated Rape is defined in Tennessee Code Annotated § 39-13-502.
  - b. Rape (Tennessee): The crime of Rape (Tennessee) is defined in Tennessee Code Annotated § 39-13-503.
  - c. Aggravated Sexual Battery: The crime of Aggravated Sexual Battery is defined in Tennessee Code Annotated § 39-13-504.
  - d. Sexual Battery: The crime of Sexual Battery is defined in Tennessee Code Annotated § 39-13-505.
  - e. Statutory Rape (Tennessee): The crime of Statutory Rape is defined in Tennessee Code Annotated § 39-13-506.
  - f. Sexual Contact with a Minor by an Authority Figure: The crime of Sexual Contact with a Minor by an Authority Figure is defined in Tennessee Code Annotated § 39-13-509.
  - g. Rape of a Child: The crime of Rape of a Child is defined in Tennessee Code Annotated § 39-13-522.
  - h. Sexual Battery by an Authority Figure: The crime of Sexual Battery by an Authority Figure is defined in Tennessee Code Annotated § 39-13-527.
  - i. Aggravated Rape of a Child: The crime of Aggravated Rape of a Child is defined in Tennessee Code Annotated § 39-13-531.
  - j. Statutory Rape by an Authority Figure: The crime of Statutory Rape by an Authority Figure is defined in Tennessee Code Annotated § 39-13-532.
  - k. Violating an Order of Protection Relating to Sexual Assault: In Tennessee, a person who has been subjected to, threatened with, or placed in fear of Aggravated Rape, Rape, Statutory Rape, Rape of a Child, Aggravated Sexual Battery, Sexual Battery, or Sexual Battery by an Authority Figure may seek relief by filing a sworn petition alleging domestic abuse or stalking by the Respondent. Such a petition must be filed in the county where the respondent resides or the county in which the domestic abuse, stalking, or sexual assault occurred. If the Respondent is not a resident of Tennessee, the petition may be filed in the county where the Complainant resides. Tennessee law provides criminal penalties for violations of certain orders of protection. More information on Tennessee's law on orders of protection can be found in Tennessee Code Annotated § 36-3-601 *et seq.*

- (22) Title IX: Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 *et seq.*
- (23) Title IX Coordinator: The person identified as the Title IX Coordinator in Section I.D. or a designee of the Title IX Coordinator.
- (24) TUAPA Hearing: A hearing conducted by a University administrative judge or hearing examiner in accordance with UTC's procedures for conducting a contested case hearing pursuant to the Tennessee Uniform Administrative Procedures Act, Tennessee Code Annotated, § 4-5-301 *et seq.*
- (25) University: The University of Tennessee or the University of Tennessee at Chattanooga.
- (26) UTC: The University of Tennessee at Chattanooga.
- (27) UTCPD: The campus police department at the University of Tennessee at Chattanooga.



## Appendix B: Mandatory Reporters When The Complainant Is A University Student<sup>11</sup>

| Employee   | Is the Employee a Mandatory Reporter when the Complainant is a University <u>Student</u> ?   |
|--|--|
| Title IX Coordinator/Office of Equity & Diversity  | Yes  |
| Deputy Title IX Coordinators   | Yes  |
| Faculty members  | Yes  |
| Exempt, non-student staff members  | Yes (except for Confidential Employees identified in Article IV.A.1, who are not Mandatory Reporters if they receive the information from a Complainant who is a patient or a client)                                  |
| Academic advisors, but not including student tutors  | Yes  |
| Faculty and staff advisors to registered student organizations   | Yes  |
| Resident Assistants and Graduate Assistants (e.g., Graduate Teaching Assistants, Academic Advisors, Graduate Assistants in Athletics)  | Yes, if the report is received in the assistant's University employment capacity (except for a graduate assistant who receives the information while working for a Confidential Employee identified in Article IV.A.1) |
| A University employee whom the University has designated as a "Campus Security Authority" for purposes of Clery Act compliance ( <a href="http://utpolice.utk.edu/clery-act/">http://utpolice.utk.edu/clery-act/</a> ) | Yes, if the report concerns a Clery Act crime that occurred on Clery Act Geography (the report shall be sent to UTPD)  |
| Employees who are not identified in this Appendix B  | No   |

<sup>11</sup> If an employee has multiple roles, the employee is a Mandatory Reporter if the answer is "Yes" on this chart with respect to any of the employee's roles in a particular situation. Also, as described in Article III.B.1, employees of UTC PD are Mandatory Reporters for reports received in a law enforcement capacity.

## Appendix C: Mandatory Reporters When The Complainant Is A University Employee<sup>12</sup>

| Employee   | Is the Employee a Mandatory Reporter when the Complainant is a University <u>Employee</u> ?  |
|--|--|
| Title IX Coordinator/Office of Equity & Diversity and Deputy Title IX Coordinators   | Yes  |
| Director of Human Resources, Asst. Director of Human Resources, or Human Resources Generalist  | Yes  |
| Employees who are supervisors  | <p>Yes, if the report is made to: (1) the immediate supervisor of either the Complainant or the Respondent; or (2) other employee who has the authority to redress the prohibited conduct.</p> <p>However, Confidential Employees identified in Article IV.A.1 are not Mandatory Reporters if they receive the information from a person who is a patient or a client.</p> |
| A University employee whom the University has designated as a “Campus Security Authority” for purposes of Clery Act compliance ( <a href="http://www.utc.edu/public-safety/clery/campus-security-authority-training.php">http://www.utc.edu/public-safety/clery/campus-security-authority-training.php</a> ) | Yes, if the report concerns a Clery Act crime that occurred on Clery Act Geography (the report shall be sent to UTPD)  |
| Employees who are not identified in this Appendix C  | No   |

<sup>12</sup> If an employee has multiple roles, the employee is a Mandatory Reporter if the answer is “Yes” on this chart with respect to any of the employee’s roles in a particular situation. Also, as described in Article III.B.1, employees of UTC PD are Mandatory Reporters for reports received in a law enforcement capacity.

## Appendix D: Confidentiality Exceptions

1. Written consent. Confidential Employees may disclose information reported to them by the Complainant with the Complainant's written consent, if the written consent satisfies the requirements of applicable state and/or federal law.
2. Campus Security Authorities – Clery Act. UTC employees who do not meet the Clery Act definition of a pastoral or professional counselor but who meet the Clery Act definition of a “campus security authority” have a duty to report non-personally identifiable information about certain incidents of Prohibited Conduct to UTCPD to comply with the Clery Act, as described in Section III.E.1.
3. Child abuse or child sexual abuse (Tennessee Code Annotated §§ 37-1-401 *et seq.*; 37-1-601 *et seq.*; 37-1-614). Tennessee law mandates reporting by any person, including a psychiatrist, psychologist, physician, or social worker, who has knowledge of physical or mental harm to a child if: (1) the nature of the harm reasonably indicates it was caused by brutality, abuse, or neglect; or (2) on the basis of available information, the harm reasonably appears to have been caused by brutality, abuse, or neglect. Tennessee law also mandates reporting by any person who knows or has reasonable cause to suspect that a child has been sexually abused, regardless of whether the child has sustained any apparent injury as a result of the abuse. State law requires a report of child abuse or child sexual abuse to be made immediately to one of the following authorities outside UTC: (1) 911, in the case of an emergency; (2) the Tennessee Department of Children's Services; (3) the sheriff of the county where the child resides; (4) the chief law enforcement official of the city where the child resides; or (5) a judge having juvenile jurisdiction over the child. The Tennessee mandatory reporting laws apply to all UTC employees, contractors, and volunteers, even if the child abuse or child sexual abuse does not occur in connection with a UTC educational program or activity. For purposes of the Tennessee mandatory reporting law, UTC students who are under the age of eighteen (18) are not excluded from the definition of a child.
4. Persons called upon to tender aid to certain victims (Tennessee Code Annotated § 38-1-101). Tennessee law requires all physicians, surgeons, nurses, pharmacists, or other persons to immediately report an incident in which they were called upon to tender aid to a victim suffering from any wound or other injury inflicted by means of a knife, pistol, gun, or other deadly weapon, or by other means of violence, or suffering from the effects of poison, or suffocation, or where a wound or injury is reasonably believed to have resulted from exposure to a methamphetamine laboratory or a methamphetamine related fire, explosion, or chemical release, or appears to be suffering from or to have been the victim of female genital mutilation in violation of Tennessee Code Annotated § 39-13-110. The report is required to be made to certain law enforcement officials. Generally, such report must state the name, residence, and employer of the victim, if known, the victim's whereabouts at the time the report is made, the place the injury occurred, and the character and extent of the victim's injuries. However, the reporting obligations do not apply if: (1) the victim is at least 18 years of age; (2) the victim objects to the release of any identifying information to law enforcement officials; (3) the victim is a victim of a sexual assault offense or domestic abuse as defined in Tennessee Code Annotated § 36-3-601; and (4) the victim's injuries are not considered by the treating healthcare professional to be life threatening, or the victim is not being treated for injuries inflicted by strangulation, a knife, pistol, gun, or other deadly weapon.
5. Subpoenas or court orders. A person, including a physician, can be required to testify concerning confidential information by a subpoena or court order.
6. Court orders – Qualified Mental Health Professionals (Tennessee Code Ann. § 33-3-114). A court can order a Qualified Mental Health Professional to disclose confidential information if, after a hearing, the court determines that disclosure is necessary for the conduct of proceedings before it.
7. Duty to warn third parties (Tennessee Code Annotated §§ 33-3-206; 33-3-210). A Qualified Mental Health Professional (e.g., a licensed psychiatrist or psychologist) is required by state law to take reasonable care to

predict, warn of, or take precautions to protect an identified victim from a patient/client's violent behavior if: (1) a patient/client has communicated to a Qualified Mental Health Professional an actual threat of bodily harm against a clearly identified victim; and (2) the Qualified Mental Health Professional, using the reasonable skill, knowledge, and care ordinarily possessed and exercised by the professional's specialty under similar circumstances, has determined that the patient/client has the apparent ability to commit such an act and is likely to carry out the threat unless prevented from doing so. If the threat communicated by a patient/client to a Qualified Mental Health Professional is an actual threat of serious bodily harm or death against a reasonably identifiable victim or victims, then the Qualified Mental Health Professional is required to report the patient/client to local law enforcement.

8. Threat of Harm to Self or Others – Survivor Advocacy Program. If a Complainant has communicated information to a Confidential Employee in the Survivor Advocacy Program and indicates that the Complainant may attempt to harm themselves or a third party, then the Confidential Employee may refer the information to a licensed psychologist, professional counselor or social worker in UTC's Counseling and Personal Development Center in order for the psychologist, professional counselor or social worker to make a professional assessment about the information and determine what action should be taken.
9. Sexually transmitted diseases (Tennessee Code Annotated §§ 68-10-102; 68-10-115).
  - A person who has a reasonable belief that a person has knowingly exposed another to HIV may inform the potential victim without incurring any liability. Please note that Tennessee law is not clear whether this obligation applies to a physician or a Qualified Mental Health Professional.
  - If any attending physician or other person knows or has good reason to suspect that a person having a STD is behaving so as to expose other persons to infection, or is about to so behave, the attending physician or other person shall notify the municipal or county health officer of the name and address of the diseased person and the essential facts in the case. Please note that Tennessee law is not clear whether this obligation applies to a Qualified Mental Health Professional.
10. Tennessee Adult Protection Act (protection of the elderly and other vulnerable persons) (Tennessee Code Annotated § 71-6-101 et seq.). Generally, Tennessee law requires any person who has reasonable cause to suspect that a person age 60 or older, or a person with certain physical and mental disabilities, has been subject abuse, neglect, or exploitation to report the situation to the Tennessee Department of Human Services, which will notify the appropriate law enforcement agency.

## Appendix E: UTC Complaint Procedures

| Nature of the Report  | Status of the Respondent      | UTC Complaint Procedure                                  |
|---|-------------------------------|--|
| Sexual Assault or a Sex Offense Crime   | Student                       | <u>Section V.B</u> and <u>Section V.D</u> of this policy |
| Dating Violence, Domestic Violence, Stalking, or a Relationship Violence Crime  | Student                       | <u>Section V.B</u> and <u>Section V.D</u> of this policy |
| Sex Discrimination (e.g., Sexual Harassment, Sexual Exploitation) that does not involve Sexual Assault, a Sex Offense Crime, a Relationship Violence Crime, Dating Violence, Domestic Violence, or Stalking | Student                       | <u>Section V.B</u> and <u>Section V.D</u> of this policy |
| Retaliation   | Student                       | <u>Section V.B</u> and <u>Section V.D</u> of this policy |
| Sexual Assault or a Sex Offense Crime   | Employee or Other Non-Student | <u>Section V.B</u> and <u>Section V.C</u> of this policy |
| Dating Violence, Domestic Violence, Stalking, or a Relationship Violence Crime  | Employee or Other Non-Student | <u>Section V.B</u> and <u>Section V.C</u> of this policy |
| Sex Discrimination (e.g., Sexual Harassment, Sexual Exploitation) that does not involve Sexual Assault, a Sex Offense Crime, a Relationship Violence Crime, Dating Violence, Domestic Violence, or Stalking | Employee or Other Non-Student | <u>Discrimination Complaint Procedure</u>                |
| Retaliation   | Employee or Other Non-Student | <u>Discrimination Complaint Procedure</u>                |

## **Appendix F: Consent Under Tennessee Criminal Law**

In Tennessee, with respect to most criminal offenses relating to sexual activity, sexual activity is criminal if: (1) the activity was accomplished without the consent of the victim and the defendant knows or has reason to know at the time of the activity that the victim did not consent; (2) force or coercion is used to accomplish the activity; (3) the defendant knows or has reason to know that the victim is mentally defective, mentally incapacitated, or physically helpless; or (4) the sexual activity is accomplished by fraud.

“Consent” is not explicitly defined in Tennessee statutory law, for purposes of criminal offenses relating to sexual activity.

“Coercion” means a threat of kidnapping, extortion, force, or violence to be performed immediately or in the future. (Tennessee Code Annotated § 39-13-501(1))

“Mentally defective” means that a person suffers from a mental disease or defect which renders that person temporarily or permanently incapable of appraising the nature of the person's conduct. (Tennessee Code Annotated § 39-13-501(3))

“Mentally incapacitated” means that a person is rendered temporarily incapable of appraising or controlling the person's conduct due to the influence of a narcotic, anesthetic or other substance administered to that person without the person's consent, or due to any other act committed upon that person without the person's consent. (Tennessee Code Annotated § 39-13-501(4))

“Physically helpless” means that a person is unconscious, asleep or for any other reason physically or verbally unable to communicate unwillingness to do an act. (Tennessee Code Annotated § 39-13-501(5))

With respect to criminal offenses relating to sexual activity with a person under the age of eighteen (18) years of age, consent is irrelevant because Tennessee law deems a minor as incapable of consenting to sexual activity. However, Tennessee law provides a close-in-age exception to that general rule that allows minors who are at least the age of thirteen (13) and less than the age of eighteen (18) to give Consent to sexual acts with another person who is less than four (4) years older than the minor.