

SOUTHWEST TENNESSEE COMMUNITY COLLEGE**SUBJECT: Sexual Misconduct****EFFECTIVE DATE: May 29, 2015****I. Purpose**

This policy is intended to provide a single, easily accessible and user-friendly document for students, employees, and others affected by sexual misconduct to find information regarding Southwest Tennessee Community College's (College) rules and procedures related to the offenses defined herein. This policy is adopted by the College specifically to address the offenses defined herein. All other forms of sex discrimination including sexual harassment are also strictly prohibited. Allegations that are not within the scope of this policy are subject to the procedures described in **TBR Guideline P-080** as adopted and implemented by the College.

II. Scope

These procedures shall be utilized by:

- A.** Any employee or student who has been a victim of sexual misconduct, regardless of sexual orientation or gender identity/expression;
- B.** Former employees or students if the conduct took place during the time employment or enrollment at Southwest and the conduct has a reasonable connection to the institution; and
- C.** All third parties with whom Southwest has an educational or business relationship and the conduct has a reasonable connection to the institution.

Source of Policy: Student Services

**Responsible Vice President of
Administrator: Student Services
TBR Policy Reference: 3:02:00:01**

**Related Policy : 3:02:00:01/8
3:02:00:01/9**

**TBR Guideline Reference: P-80
T.C.A Sections: 36-3-601; 36-3-601(5) (c);
39-17-315**

**Approved: _____
President**

Date: June 1, 2015

III. Definitions

- A. Consent**—an informed decision, freely given, made through mutually understandable words or actions that indicate a willingness to participate in mutually agreed upon sexual activity. Consent cannot be given by an individual who is asleep; unconscious; or mentally or physically incapacitated, either through the effect of drugs or alcohol or for any other reason; or, is under duress, threat, coercion, or force. Past consent does not imply future consent. Silence or an absence of resistance does not imply consent. Consent can be withdrawn at any time.
- B. Dating Violence**—violence against a person when the accuser and accused are dating, or who have dated, or who have or had a sexual relationship. “Dating” and “dated” do not include fraternization between two (2) individuals solely in a business or non-romantic social context. Violence includes, but is not necessarily limited to:
1. Inflicting, or attempting to inflict, physical injury on the accuser by other than accidental means;
 2. Placing the accuser in fear of physical harm;
 3. Physical restraint;
 4. Malicious damage to the personal property of the accuser, including inflicting, or attempting to inflict, physical injury on any animal owned, possessed, leased, kept, or held by the accuser; or,
 5. Placing a victim in fear of physical harm to any animal owned, possessed, leased, kept, or held by the accuser – **TCA § 36-3-601(5)(c)**
- C. Domestic Violence**—violence against a person when the accuser and accused:
1. Are current or former spouses;
 2. Live together or have lived together;
 3. Are related by blood or adoption;
 4. Are related or were formally related by marriage; or,
 5. Are adult or minor children of a person in a relationship described above.

Domestic Violence – includes, but is not necessarily limited to:

1. Inflicting, or attempting to inflict, physical injury on the accuser by other than accidental means;
2. Placing the accuser in fear of physical harm;
3. Physical restraint;
4. Malicious damage to the personal property of the accuser, including inflicting, or attempting to inflict, physical injury on any animal owned, possessed, leased, kept, or held by the accuser; or,

5. Placing the accuser in fear of physical harm to any animal owned, possessed, leased, kept, or held by the accuser – TCA § 36-3-601

- D. **Sexual Assault**—the nonconsensual sexual contact with the accuser by the accused, or the accused by the accuser when force or coercion is used to accomplish the act, the sexual contact is accomplished without consent of the accuser, and the accused knows or has reason to know at the time of the contact that the accuser did not or could not consent. Sexual contact includes, but is not limited to, the intentional touching of the accuser's, the accused's, or any other person's intimate parts, or the intentional touching of the clothing covering the immediate area of the accuser's, the accused's, or any other person's intimate parts, if that intentional touching can be reasonably construed as being for the purpose of sexual arousal or gratification.
- E. **Sexual Misconduct**—for the purposes of this policy, “sexual misconduct” is defined as dating violence, domestic violence, stalking, and sexual assault.
- F. **Stalking**—a willful course of conduct involving repeated or continuing harassment of another individual that would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed, or molested, and that actually causes the accuser to feel terrorized, frightened, intimidated, threatened, harassed, or molested. Harassment – means conduct directed toward the accuser that includes, but is not limited to, repeated or continuing unconsented contact that would cause a reasonable person to suffer emotional distress, and that actually causes the accuser to suffer emotional distress. Harassment does not include constitutionally protected activity or conduct that serves a legitimate purpose– TCA § 39-17-315

IV. Prohibition of Sexual Misconduct

Sexual misconduct is a form of sex discrimination prohibited by Title IX. Southwest is committed to eliminating any and all acts of sexual misconduct and discrimination on its campuses. As set forth in this policy, sexual misconduct includes dating violence, domestic violence, stalking, and sexual assault. Southwest strictly prohibits these offenses. Any allegation of sexual misconduct as defined herein will be investigated and adjudicated according to this policy.

V. Immediate Actions a Victim Should Take

- A. In the immediate aftermath of a sexual assault, domestic violence, dating violence or similar event, the most important thing is for the victim to get to a safe place.
- B. When a feeling of safety has been achieved, the victim should seek medical attention, regardless of his or her decision to report the crime to the police. It is very important for the victim of sexual assault to seek medical attention immediately so that the victim can be screened for sexually transmitted diseases/pregnancy/date rape drugs, obtain emergency contraception, and receive treatment for any physical injuries.

- C. A victim has the right to accept or decline any or all parts of a medical exam. However, critical evidence may be lost or missed if not collected or analyzed.
- D. Valuable physical evidence can be obtained from the victim and the victim's clothing. A victim should make every effort to save anything that might contain the offender's DNA. Therefore, a victim should not:
 - 1. Bathe or shower;
 - 2. Wash his/her hands;
 - 3. Brush his/her teeth;
 - 4. Use the restroom;
 - 5. Change clothes;
 - 6. Comb hair;
 - 7. Clean up the crime scene; or
 - 8. Move anything the offender may have touched
- E. Even if the victim has not yet decided to report the crime, receiving a forensic medical exam and keeping the evidence safe from damage will improve the chances that the police can access and test the stored evidence at a later date.
- F. Victims of sexual misconduct are encouraged to preserve evidence by saving text messages, instant messages, social networking pages, other communications, and keeping pictures, logs or other copies of documents, if they have any, that would be useful to investigators.

VI. Reporting Sexual Misconduct

The College encourages victims of sexual violence to talk to somebody about what happened so they can get the support they need and so the College can respond appropriately. Though reports will be kept as confidential as possible, the College cannot guarantee the confidentiality of every report or complaint. The following provisions detail the confidentiality options available to individuals.

A. Reporting Confidentially

If a victim chooses to report an incident of sexual misconduct to an employee of Southwest Tennessee Community College, the College will initiate and pursue an investigation of the incident. If a victim instead wishes to report an incident of sexual misconduct in a confidential manner, they should contact one of the following entities:

Executive Director of Human Resources and Affirmative Action
737 Union Avenue, Memphis, TN 38103
Parrish Building – Rm 238
901-333-5340/humanresources@southwest.tn.edu

If the victim chooses to report in a confidential manner, the College may be unable to conduct an investigation into the matter or pursue disciplinary action against the alleged offender.

B. Filing an Institutional Complaint

Reports of acts of sexual misconduct to any other employee of the College must be reported to the Title IX Coordinator, and the College will take

immediate and appropriate steps to investigate what happened and to resolve the matter promptly and equitably.

1. The College shall not share information with law enforcement without the victim's consent or unless the victim has also reported the incident to law enforcement.
2. Before a complainant reveals any information to an employee, the employee must ensure that the complainant understands the employee's reporting obligations.
3. If the complainant wants to maintain confidentiality, the employee must direct the victim to confidential resources as detailed in XVII.
4. If the complainant wants to tell an employee what happened but also maintain confidentiality, the employee must advise the complainant that the College will consider the request, but cannot guarantee that it will be able to honor it. In reporting the details of the incident to the Title IX Coordinator, the employee will also inform the Coordinator of the complainant's request for confidentiality.
5. An institutional complaint can be filed directly with the following:

Title IX Coordinator
737 Union Avenue
Memphis, TN 38103
Parrish Bldg. 238
humanresources@southwest.tn.edu
(901) 333-5340

C. Filing A Complaint with Law Enforcement

At any time, a victim may report the incident to local law enforcement to conduct an investigation for criminal purposes. Southwest Tennessee Community College Police Department, Memphis Police Department, Millington Police Department, Shelby County Sheriff Office, Somerville Police Department.

VII. Role of Title IX Coordinator

- A.** The College's Title IX Coordinator is responsible for overseeing all Title IX incidents reported to the institution and for implementation of this policy, including but not limited to, identifying and addressing any systemic gender-based harassment, discrimination, and sexual misconduct. The Title IX Coordinator's responsibilities include, but are not limited to, the following:
 1. Investigation or oversight of investigations of allegations related to Title IX;
 2. Coordination and oversight of educational programs including mandatory training for new students and employees and awareness campaigns for current students and employees;
 3. Coordination with local law enforcement on matters related to allegations related to sexual misconduct;

4. Coordination and oversight of training for anyone involved in responding to, investigating, or adjudicating sexual misconduct;
 5. Coordination and oversight of training for employees related to their responsibility when they are aware of sexual misconduct;
 6. Coordination and oversight of annual training for investigators, decision makers, hearing officers and hearing committee members on the issues related to sexual misconduct and on how to conduct an investigation and hearing process that protects the safety of complainants and promotes accountability; and
 7. Attending appropriate training annually on topics related to responding to or investigating allegations of sexual misconduct.
- B.** The Title IX Coordinator may designate deputies and investigators (“designees”) to assist in carrying out any of the responsibilities related to implementing this policy.

The Title IX Coordinator shall report at the beginning of each new school year to TBR’s Office of General Counsel the name of and contact information for the College’s Title IX Coordinator.

VIII. Investigation Requirements and Procedures

- A.** All proceedings will include a prompt, fair, and impartial investigation and result. The College will provide the respondent and complainant equitable rights during the investigative process.
- B.** All complaints of sexual misconduct shall be presented to the Title IX Coordinator for investigation and appropriate disposition.
- C.** Mediation between the complainant and respondent will never be considered an appropriate resolution in sexual misconduct cases.
- D.** Initiating an investigation
 1. Absent good cause, within three (3) business days of receipt of a report of sexual misconduct the Title IX Coordinator or designee shall attempt to get a written statement from the complainant that includes information related to the circumstances giving rise to the complaint, the dates of the alleged occurrences, and names of witnesses, if any. The complainant should be encouraged to complete a complaint form and submit a detailed written report of the alleged incident.
 2. When the complainant chooses not to provide a written complaint, the Title IX Coordinator or designee will still investigate and take appropriate action.
 3. Both before and during the pendency of the investigations, the Title IX Coordinator shall consult with the complainant and consider what, if any, interim measures may be necessary.
 4. Complaints made anonymously or by a third party will be investigated to the extent possible.
 5. After consultation with TBR General Counsel, if the Title IX Coordinator determines that the complaint contains an allegation of sexual misconduct,

the Title IX Coordinator shall follow the procedures set forth in this policy to investigate and adjudicate the complaint.

6. The Title IX Coordinator may appoint a qualified, sufficiently trained person to investigate the allegations made in the complaint.
7. Only one person shall be identified as the investigator for a complaint.
8. Investigations shall be conducted by officials who do not have a conflict of interest or bias for or against the complainant or respondent.
9. If the complainant or respondent believes the assigned investigator has a conflict of interest, that party must submit a written explanation of the reason for that belief to the College's President. The explanation must be submitted within three (3) business days, absent good cause, of the time when the party knew or should have known the facts that would give rise to the alleged conflict of interest. The President will determine if the facts warrant the appointment of a different investigator and respond to the party in writing within three (3) business days, absent good cause. The decision of the President shall be final.

E. What the investigation should and should not entail

1. Once the investigator receives the complaint, the investigator shall notify the complainant in writing of his/her rights and request a meeting.
2. The investigator shall also notify the respondent in writing of the complaint and his/her rights and request a meeting with the respondent.
3. The investigator shall notify the complainant, respondent and all individuals interviewed during the investigation that retaliation is strictly prohibited and may be grounds for disciplinary action. In addition, the investigator shall advise all interviewees that they should contact the investigator immediately if they believe they are being retaliated against.
4. The investigation shall include interviews with both the complainant and respondent, unless either declines an in-person interview.
5. The complainant and respondent shall be provided with the same opportunities to have others present during an interview, including the opportunity to be accompanied by the advisor of their choice to any related meeting or proceeding.
6. The College will not limit the choice of advisor for either the complainant or respondent; however, the investigator may limit the participation of advisors during the investigation.
7. The investigation shall include interviews with relevant witnesses identified by the complainant and respondent or any other potential, relevant witness made known to the investigator via other means.
8. The investigation shall include the gathering and reviewing of any documentary, electronic, physical, or other type of relevant evidence.
9. The investigator is expected to request a list of relevant witnesses and evidence from complainant and respondent and take such into consideration.
10. The investigator shall not consider any evidence about the complainant's prior sexual conduct with anyone other than the respondent. Evidence of

a prior consensual dating or sexual relationship between the parties by itself does not imply consent or preclude a finding of sexual misconduct.

IX. Timeframe for conducting the investigation

- A. Every reasonable effort shall be made to conclude the investigation and resolve the complaint within sixty (60) calendar days following receipt of the complaint. Within this sixty (60) day timeframe, absent good cause, it is expected that the investigator will conclude the investigation, that the investigator will present a report to the decision maker, and that the investigator will notify the parties in writing of decision maker's determination.
- B. If the investigator or decision maker determines that additional time is needed, both parties shall be notified in writing of the delay, the anticipated date that the investigation will be concluded, and the reasons for such delay.
- C. If either party determines that additional time is needed, that party shall request such in writing to the investigator. The written request for additional time shall include the reasons for the requested delay and the number of additional days needed. The investigator shall make every reasonable effort to respond to the request for additional time within two (2) business days following receipt of the request and shall notify both parties in written as to whether or not the request is granted.

X. Outcome of Investigation and Determination of Appropriate Action

- A. Upon completion of the investigation, the investigator shall prepare a written report that includes the allegations made by the complainant, the response of the respondent, corroborating or non-corroborating statements of the witnesses, review of other evidence obtained, and conclusions that may be drawn from the evidence gathered.
- B. It is the responsibility of the investigator to weigh the credibility of all individuals interviewed and to determine the weight to be given to information received during the course of the investigation.
- C. At the completion of the investigation, the Title IX/EEO Coordinator will make a determination as to whether a violation of the sexual misconduct policy has occurred, and where appropriate, determine the proper disciplinary/corrective action. The Title IX/EEO Coordinator shall utilize "the preponderance of the evidence" standard when making the determination. Corrective Actions for student respondents will include, but not be limited to those provided in the College's student discipline policy. Those sanctions can include suspension or expulsion from the College. Sanctions for employees can include any appropriate potential employment action from a reprimand up to, and including, termination of employment.
- D. The Title IX/EEO Coordinator's determination shall be communicated in writing simultaneously to the Complainant and Respondent, along with notice to the parties of their right to request an institutional hearing on the determination that a policy violation did or did not occur.

- E.** Either the Respondent or the Complainant may appeal the decision of the Title IX Coordinator.
1. If the Respondent is a faculty member, the appeal shall be to the Vice President for Academic Affairs.
 2. If the Respondent is a student or non-faculty employee, the appeal shall be to the Vice President for Student Affairs.
 3. Appeals to the Vice President shall be delivered to the Title IX/EEO Coordinator within ten (10) days from receipt of notice of the decision of the Title IX/EEO Coordinator.
 4. The appeal shall be conducted consistent with the procedures established in Southwest Tennessee Community College policy 3-02-00-01/9 for hearings conducted by the Student Affairs committee.
 5. Vice Presidents will apply the preponderance of evidence standard in their proceedings.
 6. All notices from the Vice Presidents will be delivered to the Complainant and Respondent at the same time and in the same form.
- F.** Both the Complainant and the Respondent shall have an opportunity to appeal the Vice President's decision to the President.
1. Appeals to the President shall be delivered to the Title IX/EEO Coordinator within ten (10) days from receipt of notice of the Vice President's decision.
 2. The appeal process shall consist of an opportunity for the parties to provide information to the institution's attention that would change the decision. The appeal process will not be a de novo review of the decision, and the parties will not be allowed to present their appeals in person to the President unless the President determines, in his/her sole discretion, to allow an in-person appeal.
 3. The appealing party must explain why he/she believes the factual information was incomplete, the analysis of the facts was incorrect, and/or the appropriate legal standard was not applied, and how this would change the determination in the case. Failure to do so may result in a denial of the appeal.
 4. The President will issue a written decision regarding the appeal as promptly as possible. This decision will constitute the institution's final decision with respect to the allegation of sexual misconduct.
 5. The President will apply the preponderance of evidence standard in his/her proceedings.
 6. All notices from the President will be delivered to the Complainant and Respondent at the same time and in the same form.

XIV. Interim Measures

- A. In situations that require immediate action because of safety or other concerns, the College will take any reasonable administrative action that is appropriate. Examples of such interim actions include, but are not limited to:
- B. Providing an escort to ensure that the complainant can move safely between classes and activities;

- C. Ensuring that the complainant and respondent do not attend the same classes;
- D. Providing access to counseling services;
- E. Providing or assisting in providing medical services;
- F. Providing academic support services, such as tutoring; and
- G. Arranging for the complainant to re-take a course or withdraw from a class without penalty, including ensuring that any changes do not adversely affect the complainant's academic record.
- H. These remedies may be applied to one, both, or multiple parties involved.
- I. Student respondents may be placed on interim suspension under the appropriate circumstances pending the outcome of the investigation. The College shall follow TBR Policy 3:02:00:01 and Southwest Tennessee Community College Policy 3-02-00-01/8 before placing a student respondent on interim suspension.
- J. Employee respondents may be, consistent with Human Resource policies, placed on administrative leave pending the outcome of the matter.

XV. Education and Prevention Programs

The College engages in comprehensive educational programming to prevent sexual misconduct. Educational programming consists of primary prevention and awareness programs for all incoming students and new employees and ongoing awareness and prevention campaigns for students, faculty, and staff that:

1. Identifies domestic violence, dating violence, sexual assault and stalking as prohibited conduct;
2. Defines what behavior constitutes domestic violence, dating violence, sexual assault and stalking;
3. Defines what behavior and actions constitute consent to sexual activity in the State of Tennessee;
4. Provides safe and positive options for bystander intervention that may be carried out by an individual to prevent harm or intervene when there is a risk of domestic violence, dating violence, sexual assault and stalking against a person other than the bystander; and
5. Provides information on risk reduction so that students and employees may recognize warning signs of abusive behavior and how to avoid potential attacks.

XVI. Assistance for Victims of Sexual Misconduct: Rights and Options

- A. Regardless of whether a victim elects to pursue a criminal complaint, the College will assist victims of sexual misconduct and will provide each victim with a written explanation of her/his rights as a member of the College.
- B. Additionally, in the Tennessee court system, a victim of domestic violence, dating violence, sexual assault and stalking has the following rights: the right to confer with the prosecution, right to be free from intimidation, harassment and abuse throughout the criminal justice system, the right to be present at

all proceedings where the defendant has the right to be present, the right to be heard, when relevant, at all critical stages of the criminal justice process as defined by the General Assembly, the right to be informed of all proceedings, and of the release, transfer or escape of the accused or convicted person, the right to a speedy trial or disposition and a prompt and final conclusion of the case after the conviction or sentence, the right to restitution from the offender and the right to be informed of each of the rights established for victims. Information related to these rights may be found at <http://www.tndagc.com/vr.htm>.

- C. Protection from abuse orders may be available through <http://www.tncourts.gov/programs/self-help-center/forms/order-protection-forms> and additional information related to such orders may be found at <http://www.tncoalition.org/get-help#national>
- D. The College does not publish the name of crime victims nor maintain identifiable information regarding victims in the Daily Crime Log or in the release of timely warnings.

XVII. Resources for Victims of Sexual Misconduct

The resources listed below are not exhaustive or limited to victims who wish to make an official report or participate in an institutional hearing, police investigation or criminal prosecution. However, in cases where a victim wishes to maintain complete confidentiality, the victim should review carefully Section IV above related to the limits on the College's ability to maintain confidentiality.

A. On Campus Resources

Office of the Title IX Coordinator	Parrish Building – Rm 238 737 Union Avenue, Memphis, TN 38103	humanresources@southwest.tn.edu 901-333-5340
Public Safety	<p>Gill Campus 3833 Mountain Terrace Memphis, TN 38127</p> <p>Union Campus Parrish Building – Rm 107 737 Union Avenue, Memphis, TN 38103</p> <p>Macon Cove Campus Farris Building 5983 Macon Cove Memphis, TN 38134</p> <p>Maxine Smith Center 8800 East Shelby Drive Memphis, TN 38125</p> <p>Whitehaven Center 3035 Directors Row, Bldg. 6,</p>	<p>police@southwest.tn.edu 901-333-5970</p> <p>police@southwest.tn.edu 901-333-5555</p> <p>police@southwest.tn.edu 901-333-4000</p> <p>police@southwest.tn.edu 901-333-6103</p> <p>police@southwest.tn.edu 901-333-6450</p>

	Memphis, TN 38131	
Advising and Counseling	<p>Macon Cove Campus Farris Building 5983 Macon Cove Memphis, TN 38134</p> <p>Union Campus M Building – Rm 110 737 Union Avenue, Memphis, TN 38103</p>	<p>advising@southwest.tn.edu 901-333-4594</p> <p>advising@southwest.tn.edu 901-333-5122</p>

B. In the Memphis Area

Shelby County Crime Victims Center	1750 Madison Ave Memphis, TN 38104	https://www.shelbycountyttn.gov/index.aspx?NID=239 Phone: 901-222-3950
Shelby County Rape Crisis center	1750 Madison Ave, Suite 102 Memphis, TN 38104	https://www.shelbycountyttn.gov/index.aspx?NID=737 Phone: 901-222-4350
Domestic Violence Intake Center (Protective Orders)		http://www.tncourts.gov/programs/self-help-center/forms/order-protection-forms

C. On-line Resources:

- <http://tncoalition.org/> - State Coalition Against Rape
- <http://tncoalition.org/> - State Coalition Against Domestic Violence
- <http://www.thehotline.org/> - Website for LGBTQ survivors of sexual or domestic violence and minority women survivors of sexual or domestic violence
- <http://www.pandys.org/malesurvivors.html> -Website for male survivors
- <http://www.rainn.org> – Rape, Abuse and Incest National Network
- <http://www.ovw.usdoj.gov/sexassault.html> - Department of Justice
- <http://www2.ed.gov/about/offices/list/ocr/index.html> Department of Education, Office of Civil Rights

XVIII. Retaliation

The College, its officers, employees, or agents are strictly prohibited from retaliating, intimidating, threatening, coercing, or otherwise discriminating against any individual for exercising their rights or responsibilities under any provision of this policy. Retaliation will result in disciplinary measures, up to and including termination or expulsion.