

**RULES
OF
EAST TENNESSEE STATE UNIVERSITY**

**CHAPTER 0240-06-01
TITLE IX COMPLIANCE**

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0240-06-01-.01 DEFINITIONS.

- (1) Actual knowledge: notice of sexual harassment or allegations of sexual harassment to ETSU's Title IX Coordinator or any ETSU official who has authority to institute corrective measures on behalf of ETSU or to any employee of an elementary or secondary school. Imputation of knowledge based solely on vicarious liability or constructive notice is insufficient to constitute actual knowledge. This definition is not met when the only ETSU official with actual knowledge is also the respondent.
- (2) Complainant: an individual who is alleged to be the victim of conduct that could constitute sexual harassment. References in this rule to the singular "complainant" include the plural, as applicable.
- (3) Deliberately indifferent: a response that is clearly unreasonable considering the known circumstances.
- (4) Education program or activity: locations, events, or circumstances where ETSU exercised substantial control over both the respondent and the context in which the sexual harassment occurs, including but not limited to any building owned or controlled by a student organization that is officially recognized by ETSU as well as any building in which University School is located.
- (5) Elementary and secondary school: The terms "elementary school and secondary school" mean University School.
- (6) Formal complaint: a document filed and signed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting ETSU investigate the allegation of sexual harassment. As used in this definition, the phrase "document filed by a complainant" means a document or electronic submission that contains the complainant's physical or digital signature, or otherwise indicates that the complainant is the person filing the formal complaint.

(Rule 0240-06-01-.01, continued)

- (7) Hearing officer: the person who is the decision-maker with respect to the determination of responsibility after a live hearing. Hearing officer may also mean a committee that is the decision-maker with respect to the determination of responsibility after a live hearing. A hearing officer cannot be the same person(s) as the Title IX Coordinator or the investigator(s). A hearing officer may be, but is not limited to, an Administrative Law Judge or other person specially trained to conduct live hearings of sexual harassment complaints.
- (8) Live hearing: a face-to-face proceeding before a hearing officer during which the parties may present evidence and cross-examine witnesses. Live hearing includes a hearing conducted via a live videoconferencing system. Live hearings may be conducted with all parties physically present in the same geographic location or, at ETSU's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually, with technology enabling participants simultaneously to see and hear each other.
- (9) Notice: the provision of information by United States Mail, courier service, or e-mail. When notice is sent by United States mail or courier service, the notice is effective on the date that the notice is mailed or delivered to the courier service. When notice is hand delivered to the parties from the institution, notice is effective on the date that the notice is delivered to the parties. When notice is sent by email, the notice is effective on the date that the email is sent to the parties' institution-provided email account.
- (10) Party: either complainant or respondent. References in this rule to the plural "parties" include complainant and respondent.
- (11) Respondent: an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment. References in this rule to the singular "respondent" include the plural, as applicable.
- (12) Sexual harassment: conduct because of sex that satisfies one (1) or more of the following:
 - (a) An ETSU employee conditioning the provision of an aid, benefit, or service of ETSU on an individual's participation in unwelcome sexual conduct;
 - (b) Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to ETSU's education program or activity; or
 - (c) Sexual assault as defined by federal law, "dating violence" as defined by federal law, "domestic violence" as defined by federal or state law, or "stalking" as defined by federal law, as follows:
 - 1. Sexual assault means any nonconsensual sexual act proscribed by state or Federal law, including when the victim lacks capacity to consent.
 - 2. Dating violence means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim, as determined by the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.
 - 3. Domestic violence means violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, or by a person similarly situated to a spouse of the victim under the domestic- or family- violence laws of the state of Tennessee.

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4. Stalking means engaging in a course of conduct directed at a specific person that would cause a reasonable person to – (A) fear for his or her safety or the safety of others or (B) suffer substantial emotional distress.
- (13) Supportive measures: non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures are designed to restore or preserve equal access to ETSU's education program(s) or activities without unreasonably burdening the other party, including measures designed to protect the safety of all parties or ETSU's educational environment, or deter sexual harassment. Supportive measures may include but are not limited to counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures.
- (14) Title IX Coordinator: the person designated and authorized by ETSU to coordinate its efforts to comply with its Title IX responsibilities.

Authority: T.C.A. §§ 49-8-101(a)(2)(A), 49-8-203(a)(1)(D), and 49-8-203(a)(4). **Administrative History:** Emergency rules filed August 14, 2020; effective through February 10, 2021. Emergency rules expired effective February 11, 2021, and the rules reverted to their previous statuses. New rules filed May 4, 2021; effective August 2, 2021.

0240-06-01-.02 STATEMENT OF NONDISCRIMINATION ON THE BASIS OF SEX.

- (1) As required by law, no student, employee, or applicant for admission or employment will be excluded, on the basis of sex, from participation in, be denied the benefit of, or be subjected to discrimination under any ETSU education program or activity.
- (2) If ETSU has actual knowledge of sexual harassment in an education program or activity against a person, ETSU will respond promptly in a manner that is not deliberately indifferent.

Authority: T.C.A. §§ 49-8-101(a)(2)(A), 49-8-203(a)(1)(D), and 49-8-203(a)(4). **Administrative History:** Emergency rules filed August 14, 2020; effective through February 10, 2021. Emergency rules expired effective February 11, 2021, and the rules reverted to their previous statuses. New rules filed May 4, 2021; effective August 2, 2021.

0240-06-01-.03 NOTIFICATION AND PUBLICATION REQUIREMENTS.

- (1) ETSU will notify applicants for admission and employment, students, employees, and legal guardians of elementary and secondary school students that it does not discriminate on the basis of sex in its education programs or activities and will provide the name, title, office address, electronic mail address, and telephone number of the Title IX Coordinator in that notification.
- (2) ETSU will notify applicants for admission and employment, students, and employees that inquiries about the application of Title IX may be referred to the Title IX Coordinator, to the Department of Education, or both.
- (3) ETSU will provide applicants for admission and employment, students, and employees notice of its grievance process, including how to report or file a complaint of sex discrimination, how to report or file a formal complaint of sexual harassment, and how ETSU will respond.
- (4) ETSU will prominently display the contact information for the Title IX Coordinator, its Title IX policies and procedures, and training materials as required by Title IX on its website and in

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each handbook or catalog that it makes available to applicants for admission and employment, students, and employees.

Authority: T.C.A. §§ 49-8-101(a)(2)(A), 49-8-203(a)(1)(D), and 49-8-203(a)(4). **Administrative History:** Emergency rules filed August 14, 2020; effective through February 10, 2021. Emergency rules expired effective February 11, 2021, and the rules reverted to their previous statuses. New rules filed May 4, 2021; effective August 2, 2021.

0240-06-01-.04 GENERAL PROVISIONS RELATED TO REPORTING TITLE IX COMPLAINTS.

- (1) Any person may report sex discrimination, including sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment), in person, by mail, by telephone, or by electronic mail, using the contact information listed for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report.
- (2) Such a report may be made at any time (including during non-business hours) by using the telephone number or electronic mail address, or by mail to the office address listed for the Title IX Coordinator.
- (3) A complainant may file a formal complaint with the Title IX Coordinator in person, by mail, or by electronic mail, using the contact information listed for the Title IX Coordinator or by any additional method ETSU designates. At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in an ETSU education program or activity.

Authority: T.C.A. §§ 49-8-101(a)(2)(A), 49-8-203(a)(1)(D), and 49-8-203(a)(4). **Administrative History:** Emergency rules filed August 14, 2020; effective through February 10, 2021. Emergency rules expired effective February 11, 2021, and the rules reverted to their previous statuses. New rules filed May 4, 2021; effective August 2, 2021.

0240-06-01-.05 ETSU'S RESPONSE TO COMPLAINTS OF SEX DISCRIMINATION.

- (1) When a person reports sex discrimination committed against a person while in the United States, ETSU will follow its rules, procedures and processes used for Title VII sex discrimination allegations, which provide for the prompt and equitable resolution of complaints alleging sex discrimination.
- (2) Where a person alleges both sex discrimination and sexual harassment committed against a person while in the United States, ETSU will follow its rules, procedures and processes for responding to a formal complaint of sexual harassment. If the formal complaint is dismissed at any point in the process, ETSU will follow its rules, procedures and processes used for Title VII sex discrimination allegations.

Authority: T.C.A. §§ 49-8-101(a)(2)(A), 49-8-203(a)(1)(D), and 49-8-203(a)(4). **Administrative History:** Emergency rules filed August 14, 2020; effective through February 10, 2021. Emergency rules expired effective February 11, 2021, and the rules reverted to their previous statuses. New rules filed May 4, 2021; effective August 2, 2021.

0240-06-01-.06 ETSU'S RESPONSE TO COMPLAINTS OF SEXUAL HARASSMENT.

- (1) If ETSU has actual knowledge of sexual harassment in an education program or activity committed against a person while in the United States, ETSU will respond promptly in a manner that is not deliberately indifferent and follow its grievance process.
- (2) ETSU will treat complainants and respondents equitably by offering supportive measures to a complainant, and in cases where a formal complaint is filed, will follow its grievance process

(Rule 0240-06-01-.06, continued)

before the imposition of any disciplinary sanctions or other actions that are not supportive measures against a respondent.

- (3) The Title IX Coordinator will promptly contact the complainant to discuss the availability of supportive measures, consider the complainant's wishes with respect to supportive measures, inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, and explain to the complainant the process for filing a formal complaint.
- (4) The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.
- (5) ETSU may remove a respondent from an education program or activity on an emergency basis only after undertaking an individualized safety and risk analysis, determining that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal, and providing the respondent with notice and an opportunity to challenge the decision immediately following the removal.
- (6) ETSU may place a non-student employee respondent on administrative leave during the pendency of a grievance process.

Authority: T.C.A. §§ 49-8-101(a)(2)(A), 49-8-203(a)(1)(D), and 49-8-203(a)(4). **Administrative History:** Emergency rules filed August 14, 2020; effective through February 10, 2021. Emergency rules expired effective February 11, 2021, and the rules reverted to their previous statuses. New rules filed May 4, 2021; effective August 2, 2021.

0240-06-01-.07 CONFIDENTIALITY.

- (1) ETSU will keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a formal complaint, any complainant, any individual who has been reported to be the perpetrator of sex discrimination, any respondent, and any witness, except as may be permitted or required by federal or state law, or to carry out the purposes of this rule and attendant policies, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.
- (2) ETSU will maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality does not impair ETSU's ability to provide the supportive measures.

Authority: T.C.A. §§ 49-8-101(a)(2)(A), 49-8-203(a)(1)(D), and 49-8-203(a)(4). **Administrative History:** Emergency rules filed August 14, 2020; effective through February 10, 2021. Emergency rules expired effective February 11, 2021, and the rules reverted to their previous statuses. New rules filed May 4, 2021; effective August 2, 2021.

0240-06-01-.08 WRITTEN NOTICE TO THE PARTIES UPON ETSU'S RECEIPT OF A FORMAL COMPLAINT.

- (1) When a formal complaint is filed, ETSU will provide parties with a written notice of its grievance process, including any informal resolution process(es).
- (2) ETSU will provide written notice of the allegations potentially constituting sexual harassment, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview. Sufficient details include the identities of the parties involved in the incident, if known, the conduct allegedly constituting sexual harassment, and the date and location of the alleged incident, if known.
- (3) ETSU's written notice will include a statement that:

(Rule 0240-06-01-.08, continued)

- (a) The respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process;
 - (b) The parties may have an advisor of their choice, who may be, but is not required to be, an attorney;
 - (c) The parties may inspect and review evidence; and
 - (d) Identifies any provision in its codes of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.
- (4) If, in the course of an investigation, ETSU decides to investigate allegations about the complainant or respondent that are not included in the initial written notice, ETSU will provide notice of the additional allegations to the parties whose identities are known.

Authority: T.C.A. §§ 49-8-101(a)(2)(A), 49-8-203(a)(1)(D), and 49-8-203(a)(4). **Administrative History:** Emergency rules filed August 14, 2020; effective through February 10, 2021. Emergency rules expired effective February 11, 2021, and the rules reverted to their previous statuses. New rules filed May 4, 2021; effective August 2, 2021.

0240-06-01-.09 INVESTIGATIONS OF FORMAL COMPLAINTS.

- (1) ETSU will investigate, to the extent necessary or possible, the allegations in a formal complaint.
- (2) If the conduct alleged in a formal complaint would not constitute sexual harassment even if proved, did not occur in ETSU's education program or activity, or did not occur against a person while in the United States, ETSU will dismiss the formal complaint with regard to that conduct for purposes of sexual harassment under Title IX; such a dismissal does not, however, preclude action under another provision of ETSU's codes of conduct or other policies.
- (3) ETSU may dismiss a formal complaint or any allegations therein, if at any time during the investigation a complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein, the respondent is no longer enrolled or employed by ETSU; or specific circumstances prevent ETSU from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.
- (4) If ETSU dismisses a formal complaint during the investigation phase, ETSU will promptly send written notice of the dismissal and reason(s) therefor simultaneously to the parties.
- (5) ETSU may consolidate formal complaints as to allegations of sexual harassment against more than one (1) respondent, or by more than one (1) complainant against one (1) or more respondents, or by one (1) party against the other party, where the allegations of sexual harassment arise out of the same facts or circumstances.
- (6) The burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rest on ETSU and not on the parties.
- (7) ETSU will not access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and are made and maintained in connection with the provision of treatment to the party, unless ETSU obtains that party's voluntary, written consent to do so for a grievance process.

(Rule 0240-06-01-.09, continued)

- (8) ETSU will provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence.
- (9) ETSU will not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence.
- (10) ETSU will provide the parties with the same opportunities to have others present during any interview or investigative process, including the opportunity to be accompanied to any related investigation meeting by the advisor of their choice, who may be, but is not required to be, an attorney.
- (11) ETSU will not limit the choice or presence of an advisor for either the complainant or respondent in any investigative meeting; however, ETSU may establish restrictions regarding the extent to which the advisor may participate in the proceedings, as long as the restrictions apply equally to both parties.
- (12) ETSU will provide to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all investigative interviews, or other meetings with a party, with sufficient time for the party to prepare to participate.
- (13) ETSU will provide both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, including the evidence upon which ETSU does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation.
- (14) Prior to completion of the investigative report, ETSU will send to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy.
- (15) ETSU will allow the parties ten (10) business days to submit a written response, which the investigator will consider prior to completion of the investigative report.
- (16) ETSU will create an investigative report that fairly summarizes relevant evidence.
- (17) At least ten (10) business days prior to a hearing or other time of determination regarding responsibility, ETSU will send the investigative report in electronic format or a hard copy to each party and the party's advisor, if any, for their review and written response to the investigative report.

Authority: T.C.A. §§ 49-8-101(a)(2)(A), 49-8-203(a)(1)(D), and 49-8-203(a)(4). **Administrative History:** Emergency rules filed August 14, 2020; effective through February 10, 2021. Emergency rules expired effective February 11, 2021, and the rules reverted to their previous statuses. New rules filed May 4, 2021; effective August 2, 2021.

0240-06-01-.10 GRIEVANCE PROCESS FOR FORMAL COMPLAINTS—GENERAL PROVISIONS.

- (1) ETSU will apply its grievance procedures and requirements equally to both parties.
- (2) During the course of the grievance process, ETSU will treat complainants and respondents equitably by providing remedies to a complainant where a determination of responsibility for sexual harassment has been made against the respondent, and by following its grievance process before the imposition of any disciplinary sanctions or other actions that are not supportive measures against a respondent.

(Rule 0240-06-01-.10, continued)

- (3) ETSU will design remedies to restore or preserve equal access to ETSU's education program or activity. Such remedies may include supportive measures; however, remedies need not be non-disciplinary or non-punitive and need not avoid burdening the respondent.
- (4) ETSU will ensure that the Title IX Coordinator, investigator, hearing officer, or decision-maker does not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent. The intent of this provision is to provide protections analogous to, and no less protective than, the conflict of interest provisions of T.C.A. § 4-5-303.
- (5) ETSU will require an objective evaluation of all relevant evidence – including both inculpatory and exculpatory evidence – and prohibit credibility determinations based on a person's status as a complainant, respondent, or witness.
- (6) ETSU will presume that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.
- (7) ETSU will apply a clear and convincing evidence standard for all formal complaints.
- (8) ETSU will require the grievance process, including the appeal process, to conclude within a reasonably prompt time frame.
- (9) ETSU will provide the range of possible disciplinary sanctions and remedies or list the possible disciplinary sanctions and remedies that ETSU may implement following any determination of responsibility.
- (10) ETSU will describe the range of supportive measures available to complainants and respondents.
- (11) ETSU will provide the parties with the same opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney.
- (12) ETSU will not limit the choice or presence of advisor for either the complainant or respondent in any grievance proceeding; however, ETSU may establish restrictions regarding the extent to which the advisor may participate in the proceedings, as long as the restrictions apply equally to both parties.
- (13) ETSU will provide to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all proceedings or hearings, or other meetings with a party, with sufficient time for the party to prepare to participate.
- (14) ETSU will appoint a hearing officer that meets the training requirements set forth in T.C.A. § 4-5-324.

Authority: T.C.A. §§ 49-8-101(a)(2)(A), 49-8-203(a)(1)(D), and 49-8-203(a)(4). **Administrative History:** Emergency rules filed August 14, 2020; effective through February 10, 2021. Emergency rules expired effective February 11, 2021, and the rules reverted to their previous statuses. New rules filed May 4, 2021; effective August 2, 2021.

0240-06-01-.11 SPECIFIC PROVISIONS RELATED TO CONDUCTING A HEARING OF FORMAL COMPLAINTS.

- (1) ETSU will conduct a live hearing of formal complaints not dismissed pursuant to this rule.

(Rule 0240-06-01-.11, continued)

- (2) At the request of either party, ETSU will provide for the live hearing to occur with the parties located in separate rooms with technology enabling the hearing officer and parties to simultaneously see and hear the party or the witness answering questions.
- (3) Live hearings may be conducted with all parties physically present in the same geographic location or, at ETSU's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually, with technology enabling participants simultaneously to see and hear each other.
- (4) At least seven days before a live hearing, ETSU will provide both parties with written notice of the following:
 - (a) The time, place, date of the hearing, and electronic access information, if applicable;
 - (b) The name of each witness ETSU expects to present at the hearing and those ETSU may present if the need arises;
 - (c) The right to request a copy of the investigative file;
 - (d) The right to request copies of all documents, copies of all electronically stored information, and access to tangible evidence that ETSU has in its possession, custody, or control and may use to support claims or defenses.
- (5) When notice is sent by United States mail or courier service, the notice is effective on the date that the notice is mailed or delivered to the courier service. When notice is hand delivered to the parties from the institution, notice is effective on the date that the notice is delivered to the parties. When notice is sent by email, the notice is effective on the date that the email is sent to the parties' institution-provided email account.
- (6) The hearing officer may allow a temporary delay of the grievance process or the limited extension of time frames for good cause with written notice to the complainant and the respondent of the delay or extension and the reasons for the action. Good cause may include but is not limited to considerations such as the absence of a party, a party's advisor, or a witness, concurrent law enforcement activity, or the need for language assistance or accommodation of disabilities.
- (7) In cases that involve more than one (1) respondent, the hearing officer may, consistent with the requirements of Title IX, consider whether separate proceedings are necessary to avoid undue prejudice to the respondents.
- (8) During the hearing, the hearing officer will make evidence subject to review and inspection during the investigation phase available to give each party equal opportunity to refer to that evidence, including for purposes of cross-examination.
- (9) Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.
- (10) Only relevant cross-examination and other questions may be asked of a party or witness. Before a complainant, respondent, or witness answers a cross-examination or other question, the hearing officer will first determine whether the question is relevant and explain any decision to exclude a question as not relevant.

(Rule 0240-06-01-.11, continued)

- (11) The hearing officer will not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.
- (12) Notwithstanding any limitations to the contrary that ETSU has placed on the advisor's participation in the hearing, the hearing officer will permit each party's advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including that challenging credibility. Such cross-examination at the live hearing will be conducted directly, orally, and in real time by the party's advisor of choice and never by a party personally.
- (13) If a party does not have an advisor at the live hearing, ETSU will provide without fee or charge to that party an advisor of ETSU's choice, who may be, but is not required to be, an attorney, to conduct cross-examination on behalf of that party.
- (14) If a party or witness does not submit to cross-examination at the live hearing, the hearing officer will not rely on any statement of that party or witness in reaching a determination regarding responsibility; provided, however, that the hearing officer cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions.
- (15) ETSU will create an audio or audiovisual recording, or transcript, of any live hearing and make it available to the parties for inspection and review.
- (16) The hearing officer may dismiss the formal complaint or any allegations therein, if at any time during the hearing a complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein, the respondent is no longer enrolled or employed by ETSU, or specific circumstances prevent ETSU from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.
- (17) If the hearing officer dismisses the formal complaint during the grievance process, the hearing officer will promptly notify the Title IX Coordinator who will promptly send written notice of the dismissal and reason(s) therefor simultaneously to the parties.

Authority: T.C.A. §§ 49-8-101(a)(2)(A), 49-8-203(a)(1)(D), and 49-8-203(a)(4). **Administrative History:** Emergency rules filed August 14, 2020; effective through February 10, 2021. Emergency rules expired effective February 11, 2021, and the rules reverted to their previous statuses. New rules filed May 4, 2021; effective August 2, 2021.

0240-06-01-.12 DETERMINATION REGARDING RESPONSIBILITY.

- (1) The hearing officer will issue a written determination simultaneously to the complainant and respondent regarding responsibility, using a clear and convincing evidence standard to reach a determination.
- (2) The written determination must include:
 - (a) Identification of allegations potentially constituting sexual harassment;
 - (b) A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
 - (c) Findings of fact supporting the determination;

(Rule 0240-06-01-.12, continued)

- (d) Conclusions regarding the application of ETSU's rule, policy, and, if applicable, code of conduct to the facts;
 - (e) A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions ETSU imposes on the respondent, and whether remedies designed to restore or preserve equal access to ETSU's education program or activity will be provided to the complainant; and
 - (f) ETSU's procedures and permissible bases for the complainant and/or respondent to appeal.
- (3) Either party may submit a written statement in support of the outcome to the Title IX Coordinator within ten (10) business days of the date of the determination or dismissal.
 - (4) The Title IX Coordinator will be responsible for effective implementation of any remedies.
 - (5) The determination regarding responsibility becomes final either on the date that ETSU provides the parties with the written appeal decision, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.

Authority: T.C.A. §§ 49-8-101(a)(2)(A), 49-8-203(a)(1)(D), and 49-8-203(a)(4). **Administrative History:** Emergency rules filed August 14, 2020; effective through February 10, 2021. Emergency rules expired effective February 11, 2021, and the rules reverted to their previous statuses. New rules filed May 4, 2021; effective August 2, 2021.

0240-06-01-.13 APPEAL OF DETERMINATION OF RESPONSIBILITY OR DISMISSAL OF FORMAL COMPLAINT.

- (1) ETSU will provide both parties with the opportunity to appeal a determination regarding responsibility or the dismissal of a formal complaint or any allegations therein, only on the following bases:
 - (a) Procedural irregularity that affected the outcome of the matter;
 - (b) New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made and that could affect the outcome of the matter; and
 - (c) The Title IX Coordinator, investigator(s), or hearing officer had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.
- (2) A party wishing to appeal a determination regarding responsibility or the dismissal of a formal complaint or any allegations therein must file a written appeal with the Title IX Coordinator within ten (10) business days of the date of the determination or the dismissal. The written appeal must identify the basis or bases for the appeal and explain with specificity the facts supporting the basis or bases of the appeal.
- (3) As to all appeals, the Title IX Coordinator will
 - (a) Notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties;
 - (b) Ensure that the decision-maker(s) for the appeal is not the same person as any investigator(s) or the hearing officer that reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator;

(Rule 0240-06-01-.13, continued)

- (c) Ensure that the decision-maker(s) for the appeal complies with the standards set forth in Rule 0240-06-01-.10(4).
- (4) Within a reasonable time, the decision-maker(s) will issue a written appeal decision describing the result of the appeal and the rationale for the result.
- (5) The Title IX Coordinator will provide the written appeal decision simultaneously to both parties.

Authority: T.C.A. §§ 49-8-101(a)(2)(A), 49-8-203(a)(1)(D), and 49-8-203(a)(4). **Administrative History:** Emergency rules filed August 14, 2020; effective through February 10, 2021. Emergency rules expired effective February 11, 2021, and the rules reverted to their previous statuses. New rules filed May 4, 2021; effective August 2, 2021.

0240-06-01-.14 INFORMAL RESOLUTION PROCESS.

- (1) ETSU will not require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, waiver of the right to an investigation and adjudication of formal complaints of sexual harassment.
- (2) ETSU will not require the parties to participate in an informal resolution process and may not offer an informal resolution process unless a formal complaint is filed. However, at any time prior to reaching a determination regarding responsibility, ETSU may facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication, but only if ETSU
 - (a) Provides to the parties a written notice disclosing the allegations, the requirements of the informal resolution process including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations;
 - (b) Any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared;
 - (c) Obtains the parties' voluntary, written consent to the informal resolution process; and
 - (d) Does not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.
- (3) At any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint.
- (4) ETSU will ensure that an individual designated to facilitate an informal resolution process does not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent. The intent of this provision is to provide protections analogous to, and no less protective than, the conflict of interest provisions of T.C.A. § 4-5-303.
- (5) ETSU will require an informal resolution process to conclude within a reasonably prompt time frame.

Authority: T.C.A. §§ 49-8-101(a)(2)(A), 49-8-203(a)(1)(D), and 49-8-203(a)(4). **Administrative History:** Emergency rules filed August 14, 2020; effective through February 10, 2021. Emergency rules expired effective February 11, 2021, and the rules reverted to their previous statuses. New rules filed May 4, 2021; effective August 2, 2021.

0240-06-01-.15 RETALIATION.

- (1) Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX or this rule, constitutes retaliation.
- (2) The exercise of rights protected under the First Amendment does not constitute retaliation.
- (3) Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance process does not constitute retaliation, provided, however, that a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.
- (4) Complaints alleging retaliation may be filed with the Title IX Coordinator who will follow the procedures and processes used for Title VII retaliation allegations.

Authority: T.C.A. §§ 49-8-101(a)(2)(A), 49-8-203(a)(1)(D), and 49-8-203(a)(4). **Administrative History:** Emergency rules filed August 14, 2020; effective through February 10, 2021. Emergency rules expired effective February 11, 2021, and the rules reverted to their previous statuses. New rules filed May 4, 2021; effective August 2, 2021.

0240-06-01-.16 TRAINING RELATED TO SEXUAL HARASSMENT ISSUES.

- (1) ETSU will ensure that its Title IX Coordinator, investigators, hearing officers, decision-makers, and any person who facilitates an informal resolution process receive training on this rule's definition of sexual harassment, the scope of ETSU's education program or activity, how to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias.
- (2) Such training will satisfy the requirements of Title IX and be developed or conducted consistent with the requirements of state law, including but not limited to T.C.A. § 4-5-324.
- (3) ETSU will ensure that hearing officers receive training on any technology to be used at a live hearing.
- (4) ETSU will ensure that hearing officers receive training on issues of relevance of questions and evidence, including when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant.
- (5) ETSU will ensure that investigators receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence.
- (6) ETSU will ensure that any materials used to train Title IX Coordinators, investigators, hearing officers, decision-makers, and any person who facilitates an informal resolution process promote impartial investigations and adjudications of formal complaints and do not rely on sex stereotypes.

Authority: T.C.A. §§ 49-8-101(a)(2)(A), 49-8-203(a)(1)(D), and 49-8-203(a)(4). **Administrative History:** Emergency rules filed August 14, 2020; effective through February 10, 2021. Emergency rules expired effective February 11, 2021, and the rules reverted to their previous statuses. New rules filed May 4, 2021; effective August 2, 2021.

0240-06-01-.17 EFFECT OF OTHER REQUIREMENTS.

- (1) ETSU will not restrict any rights protected from government action by the First Amendment of the U.S. Constitution, deprive a person of any rights that would otherwise be protected from government action under the Due Process Clauses of the Fifth and Fourteenth Amendments of the U.S. Constitution, or restrict any other rights guaranteed against government action by the U.S. Constitution or State of Tennessee Constitution.

Authority: T.C.A. §§ 49-8-101(a)(2)(A), 49-8-203(a)(1)(D), and 49-8-203(a)(4). **Administrative History:** Emergency rules filed August 14, 2020; effective through February 10, 2021. Emergency rules expired effective February 11, 2021, and the rules reverted to their previous statuses. New rules filed May 4, 2021; effective August 2, 2021.

0240-06-01-.18 RECORD RETENTION AND DISPOSITION.

- (1) ETSU will retain and dispose of records related to Title IX matters as required by federal and state laws and regulations.

Authority: T.C.A. §§ 49-8-101(a)(2)(A), 49-8-203(a)(1)(D), and 49-8-203(a)(4). **Administrative History:** Emergency rules filed August 14, 2020; effective through February 10, 2021. Emergency rules expired effective February 11, 2021, and the rules reverted to their previous statuses. New rules filed May 4, 2021; effective August 2, 2021.

0240-06-01-.19 SEVERABILITY.

- (1) If any provision of this rule or its application to any person, act, or practice is held invalid, the remainder of the rule or the application of its provisions to any person, act, or practice shall not be affected thereby.
- (2) If any provision of the Title IX regulations on which this rule is based is enjoined or held invalid or the Title IX regulations' application to any person, act, or practice is enjoined or held invalid, the remainder of this rule or the application of its provisions to any person, act, or practice shall not be affected thereby.

Authority: T.C.A. §§ 49-8-101(a)(2)(A), 49-8-203(a)(1)(D), and 49-8-203(a)(4). **Administrative History:** Emergency rules filed August 14, 2020; effective through February 10, 2021. Emergency rules expired effective February 11, 2021, and the rules reverted to their previous statuses. New rules filed May 4, 2021; effective August 2, 2021.