I. Purpose

The purpose of this Policy is to supplement Board Policies 2:02:10:01 and 5:01:02:00 relative to the orderly resolution of complaints of discrimination on the basis of race, color, religion, ethnic or national origin, sex, sexual orientation/gender identity, disability, age or status as a covered veteran, and of sexual or racial harassment at Volunteer State Community College. Fair and prompt consideration shall be given to all complaints in accordance with the procedures set forth below.

These procedures may be utilized by any employee, applicant for employment or student who believes he or she has been subjected to discrimination or harassment. Former employees or students may file complaints concerning conduct which took place during the time of employment or enrollment provided the complaint is timely filed, and the conduct has a reasonable connection to the Volunteer State Community College.

All employees, including faculty members, are to be knowledgeable of policies and procedures concerning discrimination and harassment.

All faculty members, students and staff are subject to this Policy. Any faculty member, student or staff found to have violated this Policy by engaging in behavior constituting discrimination or harassment will be subject to disciplinary action which may include dismissal, expulsion or termination, or other appropriate sanction.

All faculty and staff members are required to cooperate with investigations of alleged discrimination or harassment. Failure to cooperate may result in disciplinary action being taken up to and including termination. Students are also required to cooperate with these investigations; failure to do so may result in disciplinary action up to and including expulsion.

Because the courts have imposed stricter obligations on employers with regard to sexual harassment, Volunteer State Community College must take measures to periodically educate and train employees regarding conduct that could constitute sexual harassment in violation of this Policy. All employees, including faculty members, are expected to participate in such education and training. Further, while all faculty members, students and staff are responsible for taking reasonable and necessary action to prevent and discourage all types of discrimination and harassment, this is particularly important with regard to sexual harassment. Conduct which might constitute sexual harassment must be promptly reported whether information concerning a complaint is received formally or informally.

II. General Statement

It is the intent of the Tennessee Board of Regents and Volunteer State Community College to fully comply with Executive Order 11246, as amended; the Rehabilitation Act of 1973; the Americans with Disabilities Act of 1990; the Vietnam Era Veterans Readjustment Act of 1974, as amended; the Equal Pay Act of 1963, as amended; the Age Discrimination Act of 1975; the Pregnancy Discrimination Act; applicable state statutes and all regulations promulgated pursuant hereto. The Tennessee Board of Regents and Volunteer State Community College will promote and ensure equal
opportunity for all persons without regard to race, color, religion, ethnic or national origin, sex, disability, age, or status as a covered veteran.

It is the intent of the Board and Volunteer State Community College that the College shall be free of discrimination on the basis of sex, race, color, religion, ethnic or national origin, age or any other protected status and shall fully comply with the applicable provisions of Titles VI and VII of the Civil Rights Act of 1964, as amended; Title IX of the Educational Amendments of 1972, as amended; the federal and state constitutions; and, all other applicable federal and state statutes.

Volunteer State Community College affirms that it will not tolerate discrimination against any employee or applicant for employment because of race, color, religion, ethnic or national origin, sex, sexual orientation or gender identity, disability, age or status as a covered veteran, nor will they tolerate harassment on the basis of race or sex.

Similarly, the College shall not subject any student to discrimination or harassment under any educational program and no student shall be discriminatorily excluded from participation nor denied the benefits of any educational program on the basis of race, color, religion, ethnic or national origin, sex, sexual orientation or gender identity, disability, age or status as a covered veteran.

A. Discrimination

Discrimination may occur by:

1. Treating members of a protected class less favorably because of their membership in that class. The protected groups are based upon race, color, religion, ethnic or national origin, sex, sexual orientation/gender identity, disability, age or status as a covered veteran; or,

2. Having a policy or practice that has a disproportionately adverse impact on protected class members.

B. Sexual Harassment

Generally, sexual harassment may be defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when one of the following criteria is met:

1. submission to such conduct is made either explicitly or implicitly a term or condition of the individual's employment or of the individual's status in a program, course or activity;

2. submission to or rejection of such conduct by an individual is used as a basis for employment decisions, a criterion for evaluation, or a basis for academic or other decisions affecting such individual; or

3. such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or educational experience or creating an intimidating, hostile or offensive work or educational environment.
Sexual harassment can take many forms, but most sexual harassment falls into three categories: verbal, visual, and physical. Some examples of behavior that may constitute sexual harassment are:

- Refusing to hire, promote, or grant or deny certain privileges because of acceptance or rejection of sexual advances;
- Promising a work-related benefit or a grade in return for sexual favors;
- Suggestive or inappropriate communications, e-mail, notes, letters, or other written materials displaying objects or pictures which are sexual in nature that would create hostile or offensive work or living environments;
- Sexual innuendoes, comments, and remarks about a person's clothing, body or activities;
- Suggestive or insulting sounds;
- Whistling in a suggestive manner;
- Humor and jokes about sex that denigrate men or women;
- Sexual propositions, invitations, or pressure for sexual activity;
- Use in the classroom of sexual jokes, stories, remarks or images in no way germane to the subject matter of the class;
- Implied or overt sexual threats;
- Suggestive or obscene gestures;
- Patting, pinching, and other inappropriate touching;
- Unnecessary touching or brushing against the body;
- Attempted or actual kissing or fondling;
- Coerced sexual intercourse;
- Sexual assault;
- Suggestive or inappropriate acts, such as comments, innuendoes, or physical contact based on one’s actual or perceived sexual orientation and / or gender identity.

The examples listed above are not exclusive, but simply represent types of conduct that may constitute sexual harassment. Campus policies may delineate additional examples.

Not every act that might be offensive to an individual or a group will be considered harassment. Whether the alleged conduct constitutes sexual harassment depends upon the record as a whole and the totality of the circumstances, such as the nature of the conduct or the sexual advances in the context within which the alleged incident occurs. Harassment does not include verbal
expressions or written material that is relevant and appropriately related to course subject matter or curriculum.

Please note that sexual assaults may be criminal acts and as such, investigation and processing by the criminal justice system, local police, campus police and crisis intervention centers may supersede or occur in addition to the process developed under this Policy.

C. Racial Harassment

Generally, racial harassment is defined as any person's conduct which unreasonably interferes with an employee’s or student’s status or performance by creating an intimidating, hostile, or offensive working or educational environment. Harassment on the basis of race, color, or national origin, includes offensive or demeaning treatment of an individual, where such treatment is based on prejudiced stereotypes of a group to which that individual may belong. It includes, but is not limited to, objectionable epithets, threatened or actual physical harm or abuse, or other intimidating or insulting conduct directed against the individual because of his/her race, color, or national origin. Title VII requires employers to take prompt action to prevent individuals from expressing their opinions in a way which abuses or offends their coworkers.

III. Consensual Relationships

Intimate relationships between supervisors and their subordinates and between faculty members and students are strongly discouraged due to the inherent inequality of power in such situations. These relationships could lead to undue favoritism or the perception of undue favoritism, abuse of power, compromised judgment or impaired objectivity.

Engaging in a consensual relationship with a student over whom the faculty member has either grading, supervisory, or other evaluative authority constitutes a conflict of interest. The faculty member must take steps to remove the conflict by assigning a different supervisor to the student; resigning from the student’s academic committees; or by terminating the relationship at least while the student is in his/her class. Likewise, it is a conflict of interest for a supervisor to engage in a consensual relationship with a subordinate over whom he or she has evaluative or supervisory authority. The supervisor must take action to resolve the conflict of interest by, for example, assigning another individual to supervise and/or evaluate the subordinate.

IV. Procedures

A. General

1. The following procedures are intended to protect the rights of the aggrieved party (hereinafter, "the Complainant") as well as the party against whom a complaint of discrimination or harassment is lodged (hereinafter "the Respondent"), as required by state and federal laws. Each complaint must be properly and promptly investigated and, when warranted, appropriate disciplinary action taken against the Respondent.
2. The Tennessee Board of Regents’ Office of General Counsel shall always be consulted prior to investigation. Should Volunteer State Community College employ an on-campus legal counsel, that office must be consulted. Hereinafter, references to "Legal Counsel" shall mean either the Office of General Counsel or on-campus legal counsel, as appropriate.

3. In situations that require immediate action because of safety or other concerns, Volunteer State Community College may take any administrative action which is appropriate, e.g., administrative leave with pay pending the outcome of the investigation. Students may be placed on interim suspension under the appropriate circumstances pending the outcome of the investigation. Legal Counsel should be contacted before any immediate action is taken.

4. Each employee, applicant for employment and student shall be notified of the name, office, and telephone number of the designated EEO/AA, Student Affairs, Title VI or Title IX Officer(s) responsible for assuring compliance with this Policy, Board Policy, and federal law. The President has designated the Director of Human Resources/AA Officer (230-4834) and the Vice President of Student Services (230-3440) to assure compliance of this Policy.

B. Filing Complaints

1. Any current or former student, applicant for employment, or current or former employee who believes he or she has been subjected to discrimination or harassment at Volunteer State Community College or who believes that he or she has observed discrimination or harassment taking place shall present the complaint to the Director of Human Resources who is the designated EEO/AA, Title VI or Title IX Officer or to the Vice President for Student Services who is designated the Student Affairs Officer, (hereinafter "the Investigator") responsible for compliance with this Policy.

2. Complaints must be brought within 365 days of the last incident of discrimination or harassment. Complaints brought after that time period will not be pursued absent extraordinary circumstances. The determination of whether the complaint was timely or whether extraordinary circumstances exist to extend the complaint period must be made in conjunction with Legal Counsel.

   a. Every attempt will be made to get the Complainant to provide the complaint in writing. The complaint shall include the circumstances giving rise to the complaint, the dates of the alleged occurrences, and names of witnesses, if any. Appendix A is a sample complaint form. The complaint shall be signed by the Complainant. However, when the Complainant refuses to provide or sign a written complaint, the matter will still be investigated and appropriate action taken.

   b. Complaints made anonymously or by a third party must also be investigated to the extent possible.

3. If the complaint does not rise to the level of discrimination or harassment, the Investigator may determine to dismiss the complaint without further investigation after consultation with
Legal Counsel. The Complainant should be informed of other available processes such as the employee grievance/complaint process, or a student non-academic complaint process.

C. Investigation

1. Legal Counsel shall be notified of the complaint; whether written or verbal, as soon as possible after it is brought to the attention of the Investigator and the investigation will be under the direction of Legal Counsel. All investigatory notes and documents shall be attorney work product. The Investigator shall notify the President that an investigation is being initiated.

2. When the allegation of harassment is against the Director of Human Resources, EEO/AA, Title VI or Title IX Officer, Vice President of Student Services or Student Affairs Officer the President will identify an individual who has been trained in investigating such complaints to investigate the complaint and carry out the responsibilities assigned pursuant to this Policy. When the allegation of harassment is against the President of the College, the Director of Human Resources/EEO AA Officer shall notify the Office of the General Counsel who will assign an investigator who will make his/her report to the Chancellor.

3. When the Respondent is a student, the Vice President of Student Services as Student Affairs Officer will investigate the complaint in compliance with the procedures outlined in this Policy. If a finding of violation is made, any resulting disciplinary action will be undertaken in compliance with Volunteer State Community College’s student disciplinary procedures.

4. When a student is involved as the Complainant, the Respondent or an individual interviewed, all documentation referring to that student shall be subject to the provisions and protections of the Family Educational Records and Privacy Act (FERPA) and Tennessee Code Annotated Section 10-7-504(a) (4) which requires that certain student disciplinary records are subject to disclosure pursuant to a public records request.

5. Investigation of complaints against employees of a Tennessee Technology Centers (TTC) shall be initiated by the Vice Chancellor for Tennessee Technology Centers or his/her designee. In certain circumstances, Volunteer State Community College, as the lead institution for the technology center, may be asked to conduct the investigation. Investigations of complaints made against TTC students will be undertaken by TTC Student Services personnel. The TTC Directors are responsible for notifying the Vice Chancellor whenever a verbal or written complaint is made.

   a. In consultation with and under the direction of Legal Counsel, the Investigator shall conduct an investigation of the complaint. The purpose of the investigation is to establish whether there has been a violation of this Policy.

   b. In conducting the investigation, the Investigator shall interview the Complainant, the Respondent, and other persons believed to have knowledge related to the investigation. It is the responsibility of the Investigator to weigh the credibility of all individuals interviewed and to determine the weight to be given information received during the course of the investigation.
6. To the extent possible, the investigation will be conducted in such a manner to protect the confidentiality of both parties. However, the Complainant, Respondent and all individuals interviewed shall be informed that the institution has an obligation to address harassment and that, in order to conduct an effective investigation, complete confidentiality cannot be guaranteed. Information may need to be revealed to the Respondent and to potential witnesses. However, information about the complaint should be shared only with those who have a need to know about it. The Complainant and Respondent shall also be informed that a request to inspect documents made pursuant to the Public Records Act may result in certain documents being released.

A Complainant may be informed that if he or she wants to speak privately and in confidence about discrimination or harassment, he or she may wish to consult with a social worker, counselor, therapist or member of the clergy who is permitted, by law, to assure greater confidentiality.

Additionally, the Complainant may be given assurances that measures will be taken against the Respondent should there be retaliation against him or her. Retaliation is prohibited and should be reported to the investigator immediately. Allegations of retaliation must also be investigated pursuant to the procedure set out in this Policy.

1. The Investigator shall notify in writing the Respondent within five (5) working days of receipt of the complaint. The Respondent shall respond in writing to the complaint within five (5) working days following the date of receipt of the Investigator’s notification.

2. If either the Complainant or the Respondent is a student, the Investigator should communicate the prohibition against disclosure of personally identifiable information with regard to the student, based on FERPA.

3. The Complainant, the Respondent and all individuals interviewed shall be notified that any retaliation engaged in connection with the complaint or its investigation is strictly prohibited regardless of the outcome of the P-080 investigation and may, in itself, be grounds for disciplinary action.

4. At any time during the course of the investigation, the Investigator may meet with both the Complainant and the Respondent individually for the purpose of resolving the complaint informally. If informal resolution is successful in resolving the complaint, a report of such, having first been reviewed and approved by Legal Counsel, shall be submitted to the President.

   a. If informal resolution is unsuccessful, the Investigator shall draft a report summarizing the investigation which shall be sent to Legal Counsel for review. Each report shall outline the basis of the complaint, including the dates of the alleged occurrences, the response of the Respondent, the findings of the Investigator, whether there were any attempts made to resolve the complaint informally, a determination of whether there was a violation of the Policy, and recommendations regarding disposition of the complaint.
b. After review and approval by Legal Counsel, the report shall be submitted to the President within a reasonable period of time following receipt of the complaint. If the investigation concerns allegations of sexual harassment, the report shall be submitted within twenty (20) working days following receipt of the complaint. No working papers, statements, etc. generated in the investigation should be attached to the report. In situations where more time is needed to complete the investigation, for reasons such as difficulty in locating a necessary witness, or complexity of the complaint, additional time may be taken, but only following notice to Legal Counsel and written notice to both the Complainant and the Respondent.

5. If, after investigation, there is insufficient evidence to corroborate the complaint or, in any situation in which the Complainant refuses to cooperate in the investigation, it may be appropriate to discuss the complaint with the Respondent, informing him or her that he or she is not being accused of a P-080 violation, but that the conduct alleged, had it been substantiated, could be found to violate this Policy. Any investigation and subsequent discussion should be documented and a report submitted as set forth in this procedure. It should also be noted that conduct which does not rise to the level of actionable discrimination or harassment may, nevertheless, provide a basis for disciplinary action against the Respondent.

6. The President shall review the Investigator’s report, and shall make a final written determination as to whether a violation has occurred and, what the appropriate resolution should be. After the President has made this determination, the Investigator shall provide both the Complainant and the Respondent with a copy of the determination, along with a copy of the Investigator’s report.

7. If the investigation reveals evidence that a violation of the Policy has occurred, the President may meet with the Respondent and/or the Complainant and attempt to resolve the problem by agreement. Appropriate steps must be taken to ensure that the discrimination or harassment will not reoccur.

8. If a violation of this Policy is determined to have occurred, the Respondent shall be advised of his/her right to a hearing pursuant to the procedures set forth below. The Respondent must file the request for a hearing within ten (10) working days following receipt of the President’s determination.

   a. After completion of the investigation and any subsequent disciplinary proceedings, all documentation shall be forwarded to Legal Counsel. However, copies of the President’s determination, the Investigator’s report, the complaint (if it concerns an employee) and documentation of any disciplinary action taken against the Respondent should be placed in a file maintained in the Office of Human Resources. This file shall be maintained in a location designated by the President. If such action was taken, copies of documentation establishing disciplinary action taken against the Respondent, whether an employee or student, shall also be maintained in the Respondent’s personnel or student record, as appropriate.
b. Some documents involved in a P-080 matter may be subject to the Public Records Act and thus open to public inspection. Other documents may be protected under FERPA, the attorney/client privilege, or attorney work product and would not be releasable. If a Public Records request is received, Legal Counsel must be consulted prior to the release of any documents.

9. A complaint found to have been intentionally dishonest or maliciously made will subject the Complainant to appropriate disciplinary action.

D. Hearing

1. If the Respondent requests a hearing, he or she shall be advised of the established Volunteer State Community College procedures available for resolution of the matter in question which will generally be the procedure for the hearing of a grievance before a grievance committee.

   a. The grievance hearing procedures shall include the following minimal requirements:

      1. Notice to the Respondent of the hearing which must include a summary of the facts that form the basis of the violation; the date, time and place of the hearing; and, the rights afforded the Respondent during the hearing process.

      2. The right of the Respondent to present his or her case.

      3. The right of the Respondent to be accompanied by an advisor who may assist the Respondent but may not advocate on his or her behalf.

      4. The right of the Respondent to call witnesses in his or her behalf.

      5. The right of the Respondent to confront and cross-examine.

   b. In the following situations the Respondent must be given the option of either an institutional hearing, or of having the hearing held pursuant to the Tennessee Uniform Administrative Procedures Act (TUAPA):

      1. The Respondent is a support staff employee whom the President has determined should be demoted, suspended without pay or terminated; or,

      2. The Respondent is a student whom the President has determined should be suspended or expelled.

The election of which hearing process to utilize must be in writing, signed by the Respondent, expressly waiving the TUAPA option.

If the Respondent elects to proceed pursuant to the TUAPA, Legal Counsel should be notified immediately.
1. Under either hearing procedure, the Respondent bears the burden of proof to establish that no violation of this Policy occurred. The standard of proof in these hearings which the Respondent must meet shall be by a preponderance of the evidence.

2. When an allegation involves a tenured faculty member, the same informal and formal procedures set out above shall be utilized. Tenured faculty members shall have the same right to elect hearing procedures as set out in this section. However, when the investigation results in a finding that the harassment policy was violated and the President concurs with that finding and determines that procedures pursuant to TBR Policies 5:02:03:10, 5:02:03:60, and 5:02:03:70 should be undertaken in consideration of the termination of a tenured faculty member, the matter will then proceed directly to a hearing under either the Volunteer State Community College’s Policy for termination of tenure or TBR Policies 5:02:03:10, 5:02:03:60, and 5:02:03:70.

TBR Source: P-080: Presidents Meeting: November 14, 1984 and November 16, 1984 AVTS Sub-Council meeting; August 16, 1988; February 14, 1989; November 10, 1992; August 13, 1996; February 13, 2001; August 16, 2005; November 8, 2005; February 13, 2008. P-110: Presidents Meeting: August 18, 1987; May 16, 1989; August 21, 2001; February 13, 2002; February 13, 2008. 5:02:03:70: April 2, 2004 This policy is a result of a comprehensive revision of former TBR Policy 5:02:03:00, Academic Freedom, Responsibility and Tenure. The former policy included provisions related to academic freedom and responsibility and tenure in both universities and community colleges. The revision, approved by the Tennessee Board of Regents on April 2, 2004, created a separate policy on academic freedom and responsibility pertinent to both universities and community colleges, established separate policies relative to tenure for universities and community colleges, and instituted separate policies on faculty appointments for universities and community colleges. Faculty members appointed prior to July 1, 2004, may elect to be considered for tenure under the provisions of Policy 5:02:03:00 or under the revised policy for a four-year phase-in period. The revised policy will be applicable to all tenure action taken on or subsequent to July 1, 2008, for faculty whose employment began on or after July 1, 2004.

Appendix A	DISCRIMINATION / HARASSMENT COMPLAINT FORM

Date: ____________________________

Complainant:

Address:

Email address: __________________________________________________________ Phone:
(home)_________________________ (work)__________________________

Name(s) of person(s) accused of wrongdoing: ________________________________

Alleged Discrimination / Harassment Factors:

__ Race __ National Origin

__Color __ Disability

__Religion __ Age

__ Sex __ Veteran Status

__Sexual Orientation/Gender Identity

Describe all actions of person(s) named above. Be as detailed as possible; include the date, time and place of each event(s) or conduct involved. Attach additional pages, if needed.

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What effect has this had on you? __________________________________________________________________________

Names of witnesses to the above-described events. Include phone number(s), if known.

Names of anyone with whom you discussed the above-described events. Include phone number, if known.

How would you like this matter resolved? __________________________________________________________________________

Complainant Signature: __________________________________________________________________________________________

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