

**RULES
OF
THE STATE BOARD OF EDUCATION
THE TENNESSEE DEPARTMENT OF EDUCATION**

**CHAPTER 0520-12-04
CIVIL RIGHTS COMPLIANCE**

TABLE OF CONTENTS

0520-12-04-.01	Definitions	0520-12-04-.05	Sexual Harassment
0520-12-04-.02	General Regulations. Adoption by Reference.	0520-12-04-.06	TOCR Responsibilities
0520-12-04-.03	Purpose	0520-12-04-.07	TOCR Investigations
0520-12-04-.04	LEA and Charter School Responsibilities		

0520-12-04-.01 DEFINITIONS

- (1) "Charter school" means a public charter school as defined at T.C.A. § 49-13-104.
- (2) "Complainant" means an individual who is alleged to be the target of conduct that could constitute harassment or discrimination under Title VI or Title IX.
- (3) "Complaint" means a report or notice of discrimination or harassment under Title VI or Title IX filed with an LEA or charter school or with TOCR that does not meet the definition of "Formal Complaint" as defined by this rule.
- (4) "Department" means the Tennessee Department of Education.
- (5) "English Learner" (EL) means a non-English language background student who qualifies for English as a second language services via a Department-approved English Language Proficiency screener,
- (6) "Federal Financial Assistance" means the definition of "federal financial assistance" provided at 34 C.F.R. §100.13(f) and §106.2(g).
- (7) "Formal Complaint" means a document filed by a Complainant or signed by a Title IX Coordinator alleging Sexual Harassment against a Respondent and requesting that an LEA or charter school investigate an allegation of Sexual Harassment.
- (8) "LEA" means local education agency and has the same meaning given in T.C.A. § 49-1-103(2).
- (9) "Pass-through Entity" means a non-Federal entity that provides a subaward to a subrecipient to carry out part of a Federal program.
- (10) "Records" include but are not limited to, original or copies of the following: the complaint, investigative notes, investigation reports, evidence logs, transcripts or video documentation of testimony, electronic files and communications, photographs and evidentiary documents, lists of all personnel and witnesses involved in proceedings, resolution agreements, findings or determinations of responsibility, documentation regarding Supportive Measures, and appeal documents; or for the purposes of Title IX sexual harassment allegations, items prepared and maintained in accordance with 34 C.F.R. § 106.45(b)(10).

(Rule 0520-12-04, continued)

- (11) “Respondent” means an individual who is reported to be the perpetrator of conduct that could constitute harassment or discrimination under Title VI or Title IX.
- (12) “Sexual Harassment” is conduct on the basis of sex that satisfies one or more of the following:
- (a) A LEA or charter school employee conditioning an aid, benefit, or service of an education program or activity 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 the education program or activity; or
 - (c) Sexual assault, dating violence, domestic violence, or stalking as defined by federal law.
- (13) “Supportive Measures” mean non-disciplinary, non-punitive, individualized services offered to the Complainant and the Respondent, as appropriate, as reasonably available, and without fee or charge, before or after the filing of a formal complaint or where no formal complaint has been filed including, but not limited to: counseling, course modifications, schedule changes, and increased monitoring or supervision.
- (14) “Title VI” means Title VI of the Civil Rights Act of 1964, a federal statute codified at 42 U.S.C. § 2000d et seq. that prohibits discrimination based on race, color, or national origin in programs or activities receiving Federal Financial Assistance.
- (15) “Title IX” means Title IX of the Education Amendments of 1972, a federal statute codified at 20 U.S.C. § 1681 et seq. that prohibits discrimination based on sex in education programs and activities that receive Federal Financial Assistance.
- (16) “Title IX Personnel” means any individual designated by an LEA or charter school as a Title IX Coordinator, investigator, decision-maker, or any person designated by an LEA or charter school to facilitate an informal resolution process under Title IX.
- (17) “TOCR” means the Tennessee Department of Education Office for Civil Rights.

Authority: T.C.A. §§ 49-1-102, 49-1-302, 49-3-201, 42 U.S.C. § 2000d et seq., 20 U.S.C. § 1681 et seq., 34 C.F.R. Part 100, 34 C.F.R. Part 106. **Administrative History:**

0520-12-04-.02 GENERAL REGULATIONS. ADOPTION BY REFERENCE

The State Board of Education adopts by reference the Compilation of Federal Regulations at 34 C.F.R. Parts 100 and 106 in their entirety unless otherwise provided in this chapter.

Authority: T.C.A. §§ 49-1-102, 49-1-302, 49-3-201, 42 U.S.C. § 2000d et seq., 20 U.S.C. § 1681 et seq. 34 C.F.R. Part 100, 34 C.F.R. Part 106. **Administrative History:**

(Rule 0520-12-04, continued)

0520-12-04-.03 PURPOSE

The purpose of this chapter is to assist in Department, LEA, and charter school compliance with Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq.) and Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681 et seq.).

Authority: *T.C.A. §§ 49-1-102, 49-1-302, 4-4-123, 49-3-201, 42 U.S.C. § 2000d et seq., 20 U.S.C. § 1681 et seq., 34 C.F.R. Part 100, 34 C.F.R. Part 106. Administrative History:*

0520-12-04-.04 LEA AND CHARTER SCHOOL RESPONSIBILITIES

- (1) Each LEA or charter school shall:
 - (a) Prohibit discrimination and harassment on the basis of race, color, national origin, and sex in all school and/or LEA or charter school programs and activities;
 - (b) Appoint a Title VI and Title IX coordinator(s) to oversee compliance with Title VI and Title IX;
 - (c) Prominently display the required contact information of the Title IX coordinator in a manner in accordance with 34 C.F.R. § 106.8(b)(2);
 - (d) Draft and implement policies and procedures to ensure compliance with Titles VI and IX;
 - (e) Provide notice of applicable policies and procedures to staff, students, and families;
 - (f) Train staff regarding applicable policies and procedures;
 - (g) Implement measures aimed at preventing violations of Titles VI and IX;
 - (h) Investigate reports and suspected violations of Titles VI and IX;
 - (i) Immediately upon recognition that LEA investigation resources are inadequate in numbers or training, request training and/or technical assistance from TOCR;
 - (j) For any reports containing allegations of child abuse, report such allegations to appropriate authorities;
 - (k) Take remedial action authorized by law, as appropriate, when violations of Titles VI and IX occur; and
 - (l) Maintain all records of investigative actions and/or resolution agreements in accordance with federal, state, and local record retention laws, rules, and policies.
- (2) LEAs and charter schools shall meet the following additional obligations regarding English Learners:

(Rule 0520-12-04-.04, continued)

- (a) Ensure English Learners have equal access to and meaningful participation in educational programs and opportunities.
 - (b) LEA or charter school practices shall not result in the inappropriate placement of English Learners in, or the exclusion from, special programs or activities based on English language proficiency or national origin.
 - (c) LEAs or charter schools shall not deny enrollment to a student on the basis of the student's or their parents' or guardians' actual or perceived citizenship or immigration status.
- (3) In accordance with T.C.A. § 49-6-4503, LEAs shall annually submit a civil rights and bullying compliance report to the Department. The report shall be in the format provided by the Department and shall be submitted by August 1 of each year.
 - (4) All Title VI and Title IX policies drafted pursuant to this chapter shall comply with all applicable state and federal laws, both civil and criminal, including, but not limited to the U.S. Constitution, the Tennessee Constitution, T.C.A. Title 39 and other State statutes falling outside of T.C.A. Title 49.

Authority: T.C.A. §§ 49-1-102, 49-1-302, 49-3-201, 49-6-4503, 42 U.S.C. § 2000d et seq., 20 U.S.C. § 1681 et seq. 34 C.F.R. Part 100, 34 C.F.R. Part 106. **Administrative History:**

0520-12-04-.05 SEXUAL HARASSMENT

- (1) Each LEA or charter school shall have a Title IX policy prohibiting Sexual Harassment. The policy shall:
 - (a) Require that the LEA or charter school responds to an alleged instance of Sexual Harassment in a manner in accordance with 34 C.F.R. § 106.44(a)-(b);
 - (b) List the name and contact information of the LEA or charter school's Title IX coordinator;
- (2) Each LEA shall establish a grievance process for responding to Formal Complaints of Sexual Harassment that complies with 34 C.F.R. § 106.45(b) by:
 - (a) Treating 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 a grievance process that complies with 34 C.F.R. § 106.45 before the imposition of any disciplinary sanctions or other actions that are not Supportive Measures, against a Respondent. Remedies must be designed to restore or preserve equal access to the LEA or charter school's education program or activity;
 - (b) Requiring objective evaluation of all relevant evidence and providing that credibility determinations may not be based on a person's status as a Complainant, Respondent, or witness;
 - (c) Requiring that Title IX personnel be free from conflicts of interest or bias and be trained in accordance with 34 C.F.R. § 106.45(b)(1)(iii) on:
 - 1. The definition of Sexual Harassment;

(Rule 0520-12-04-.05, continued)

2. The scope of the LEA or charter school's education program or activity;
 3. How to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable;
 4. How to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, bias;
 5. Any technology used to conduct live hearings as applicable; and
 6. Issues of relevance and evidence;
- (d) Including a presumption that the Respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process;
- (e) Including reasonably prompt time frames for conclusion of the grievance process, including reasonably prompt time frames for filing and resolving appeals and informal resolution processes if offered, and a process that allows for the 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;
- (f) Describing the range of possible disciplinary sanctions and remedies or list the possible disciplinary sanctions and remedies that the LEA or charter school may implement following determinations of responsibility;
- (g) Stating whether the standard of evidence to be used to determine responsibility is the preponderance of the evidence standard or the clear and convincing evidence standard, applying the same standard of evidence for Formal Complaints against students as for Formal Complaints against employees, including faculty, and applying the same standard of evidence to all Formal Complaints of sexual harassment;
- (h) Including the procedures and permissible bases for the Complainant and Respondent to appeal;
- (i) Describing the range of Supportive Measures available to Complainants and Respondents;
- (j) Not requiring, allowing, relying on, or otherwise using 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;
- (k) Requiring that, upon receipt of a Formal Complaint, a LEA or charter school provides parties with written notice of the allegations in accordance with 34 C.F.R. § 106.45(b)(2);
- (l) Allowing for the dismissal of a Formal Complaint in accordance with 34 C.F.R. § 106.45(b)(3);

(Rule 0520-12-04-.05, continued)

- (m) Allowing for consolidation of Formal Complaints in accordance with 34 C.F.R. § 106.45(b)(4);
- (n) Utilizing procedures for investigating a Formal Complaint in accordance with 34 C.F.R. § 106.45(b)(5);
- (o) Establishing a process for a live hearing with cross examination in accordance with 34 C.F.R. § 106.45(b)(6), if applicable, and establishing a process in accordance with 34 C.F.R. § 106.45(b)(6)(ii) that:
 - 1. Affords each party the opportunity to submit written, relevant questions that the party wants asked of any other party or witness;
 - 2. Provides each party with the answers; and
 - 3. Allow for additional, limited follow-up questions from each party;
- (p) Establishing procedures for issuing a determination regarding responsibility in accordance with 34 C.F.R. § 106.45(b)(7);
- (q) Establishing an appeal process that allows both parties to appeal the LEA or charter school's determination regarding responsibility and the dismissal of a Formal Complaint in accordance with 34 C.F.R. § 106.45(b)(8);
- (r) If applicable, establishing an informal resolution process in accordance with 34 C.F.R. § 106.45(b)(9);
- (s) Maintaining records in accordance with 34 C.F.R. § 106.45(b)(10);
- (t) Applying all provisions, rules, and practices not required by Title IX equally to both parties in accordance with 34 C.F.R. § 106.45(b).

Authority: T.C.A. §§ 49-1-102, 49-1-302, 49-3-201, 20 U.S.C. § 1681 et seq., 34 C.F.R. Part 106.
Administrative History:

0520-12-04-.06 TOCR RESPONSIBILITIES

- (1) TOCR shall:
 - (a) Ensure LEA or charter school compliance with Titles VI and IX and this chapter pursuant to its obligations under 34 C.F.R. 76.770 and as a Pass-through Entity under 2 C.F.R. § 200.332;
 - (b) Provide training and technical assistance to LEA and charter schools regarding compliance with Titles VI and IX and this chapter, upon request;
 - (c) Investigate complaints arising under Titles VI and IX filed with TOCR in accordance with State Board rule 0520-14-02-.07;

(Rule 0520-12-04-.06, continued)

- (d) Annually complete a Title IX compliance report and implementation plan in accordance with T.C.A. § 4-4-123;
- (e) Annually submit a Title VI compliance report and implementation plan in accordance with T.C.A. § 4-21-901;
- (f) Annually submit a civil rights and bullying compliance report to the education committees of the General Assembly pursuant T.C.A. § 49-6-4503; and
- (g) Maintain all records or other investigative actions or resolution actions in accordance with federal, state, and local record retention laws, rules, and policies.

Authority: T.C.A. §§ 49-1-102, 49-1-302, 49-6-4503, 4-4-123, 49-3-201 4-21-901; 42 U.S.C. § 2000d et seq., 20 U.S.C. § 1681 et seq. 34 C.F.R. Part 100, 34 C.F.R. Part 106. **Administrative History:**

0520-12-04-.07 TOCR INVESTIGATIONS

- (1) Upon receiving a Complaint arising under Title VI or Title IX, TOCR shall:
 - (a) Assign the Complaint a complaint number and enter such into a log or electronic filing system;
 - (b) Contact the Complainant to obtain any additional information or clarification, as needed;
 - (c) Determine if TOCR has jurisdiction to investigate;
 - (d) Send an acknowledgement letter to the Complainant stating whether TOCR will pursue an investigation.
- (2) The following timeliness requirements apply to TOCR's investigation of a Complaint arising under Title IV or Title IX:
 - (a) TOCR may investigate allegations that have been filed within one hundred eighty (180) days of the date on which the discrimination is alleged to have occurred.
 - (b) If the Complaint alleges discrimination of an ongoing or continuous nature, TOCR will include older events in its investigation as long as the most recent event of the ongoing discrimination occurred within one hundred eighty (180) days of submitting the Complaint.
 - (c) TOCR may grant waivers of timeliness if:
 - 1. The Complainant could not reasonably be expected to have known the act was discriminatory within the 180 calendar day period and the Complaint was filed within 60 calendar days after the Complainant could have become aware of the alleged discrimination. Lack of previous awareness of TOCR's complaint process or the civil rights laws and regulations enforced by TOCR shall not a basis for a waiver;

(Rule 0520-12-04-.07, continued)

2. The Complainant was unable to file a Complaint because of incapacitating illness or other incapacitating circumstances during the 180 calendar day period that rendered the Complainant physically or mentally incapable of filing a Complaint or obtaining assistance so that a Complaint could be filed on their behalf, the Complainant provides to TOCR documentation demonstrating such lack of capacity, and the Complaint allegation was filed within 60 calendar days after the incapacitation ended;
 3. The Complainant filed a Complaint alleging the same or similar allegation based on the same operative facts within the 180 calendar day period in federal or state court, and filed a Complaint with TOCR within 60 calendar days after there had been no decision on the merits or settlement of the complaint allegations. Dismissal with prejudice shall be considered a decision on the merits;
 4. The Complainant filed a Complaint alleging the same or similar allegation based on the same operative facts within the 180 calendar day period with another federal, state or local agency, and filed a Complaint with TOCR within 60 calendar days after the other agency completed its investigation; or
 5. The Complainant filed, within the 180 calendar day period, an internal grievance with their school or LEA or charter school alleging the same discriminatory conduct that is the subject of the TOCR Complaint, and the Complaint is filed no later than 60 calendar days after the internal grievance is concluded.
- (3) If TOCR opens an investigation, it shall send a copy of the Complaint and a letter to the LEA and/or charter school requesting a response.
- (a) The LEA or charter school's response shall include the information requested by TOCR and any relevant documentation and witness information the LEA or charter school believes will aid TOCR in properly investigating and resolving the allegations.
- (4) The LEA or charter school shall make available to TOCR all Records, information, documents, personnel, students, and evidence needed to resolve the investigation.
- (5) TOCR shall maintain the confidentiality of confidential student information in accordance with the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g;
- (6) TOCR shall comply with the Tennessee Public Records Act at T.C.A. § 10-7-503 while maintaining the confidentiality of student records protected by FERPA.
- (7) Failure of the LEA or charter school to provide necessary documentation, grant necessary interviews, or respond to specified questions may result in a finding of noncompliance against the LEA or charter school.
- (8) An LEA or charter school may ask to resolve the Complaint with a resolution agreement before TOCR completes its investigation.
- (9) In accordance with Department procedures, TOCR may execute a resolution agreement in order to execute a mutually agreeable early resolution prior to the conclusion of the full investigation.

(Rule 0520-12-04-.07, continued)

- (10) At the conclusion of an investigation, TOCR shall determine that there is either sufficient or insufficient evidence to support a conclusion of noncompliance. In its investigative summary and findings, TOCR shall include:
 - (a) A statement of the issues raised by the Complainant;
 - (b) A statement of TOCR's jurisdiction over the Complaint;
 - (c) TOCR's determination of sufficient or insufficient evidence to conclude noncompliance; and
 - (d) A clear explanation of the pertinent legal standard and factual analysis, referencing the evidence relied upon in making the determination.
- (11) The Complainant or LEA or charter school may file a written request for reconsideration to the Department of Education's Office of General Counsel (OGC).
 - (a) The request for reconsideration shall be as specific as possible and highlight factual or legal concerns that could change the disposition of the case. General dissatisfaction with the investigative summary and findings shall not be a sufficient basis for a request for reconsideration.
 - (b) In its review, the OGC shall examine the documentation obtained throughout TOCR's investigation. If deemed prudent by the OGC, the OGC may, in limited circumstances, request and include in the review additional responses or submissions from the Complainant and/or the LEA or charter school. It may also be necessary to re-interview certain witnesses if records do not reflect clear responses to the alleged violations of law. The OGC shall not consider issues or concerns that were not raised during the initial investigation.
- (12) In addition, the Complainant or LEA or charter school may directly file for review of the Department's initial decision or reconsideration decision with the U.S. Department of Education Office for Civil Rights.
- (13) If TOCR determines that the evidence supports a conclusion that the LEA or charter school failed to comply with applicable regulations, TOCR shall negotiate a resolution agreement with the LEA or charter school after issuing its investigative summary and findings. Each resolution agreement shall:
 - (a) Be approved by the LEA or charter school and signed by a person with authority to bind the LEA or charter school;
 - (b) Be approved by TOCR or a person specifically designated as acting on its behalf;
 - (c) Acknowledge the LEA or charter school's noncompliance, state the LEA or charter school's willingness to correct the noncompliance, and commit the LEA or charter school to achieve and maintain compliance in the future; and
 - (d) Include a corrective action plan, which provides:

(Rule 0520-12-04-.07, continued)

1. The purpose of the plan;
 2. Specific acts or steps the LEA or charter school will take to resolve compliance issues;
 3. Dates for implementing each act or step and anticipated completion; and
 4. Dates for submission of reports and documentation verifying implementation.
- (14) TOCR shall monitor resolution agreements to ensure LEA or charter school compliance with the terms of each agreement.
- (a) TOCR may require the LEA or charter school to submit written reports and documentation that provides evidence of LEA or charter school's continued compliance with the resolution agreement.
 - (b) TOCR shall provide written notice to the LEA or charter school of any deficiencies in implementation and shall request immediate and appropriate action to address those deficiencies. When necessary, TOCR shall require additions to the resolution agreement to address the failure of the LEA or charter school to fully implement commitments in the original agreement.
- (15) TOCR may permit modification or termination of the resolution agreement or corrective action plan if it learns that circumstances have arisen that either fully resolve or render moot some or all of the compliance concerns that were addressed by the resolution agreement.
- (16) TOCR may modify the resolution agreement or corrective action plan in response to changes in controlling case law, statutes, and regulations.
- (17) Modification of any resolution agreement provision will be granted on a case-by-case basis. The Complainant will be notified, in writing, of significant modifications to the resolution agreement.
- (18) TOCR will conclude the monitoring of a case when it determines that the LEA or charter school has fully implemented the terms of the resolution agreement. The LEA or charter school and Complainant will be promptly notified, in writing, of the conclusion of monitoring.

Authority: *T.C.A. §§ 49-1-102, 49-1-302, 49-3-201, 42 U.S.C. § 2000d et seq., 20 U.S.C. § 1681 et seq. 34 C.F.R. Part 100, 34 C.F.R. Part 106. Administrative History:*