

## G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Human Services

DIVISION: Family Assistance Division

SUBJECT: Financial Eligibility Requirements - Families First Program

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 71-3-105(f)

EFFECTIVE DATES: November 29, 2018 through June 30, 2019

FISCAL IMPACT: None

STAFF RULE ABSTRACT: This rule implements the recently enacted provisions of Tennessee Public Chapter 789, providing for the provision of temporary incentive TANF benefits for a period of up to six months to clients and changes implemented to the Families First maximum payment amount for an assistance group of three (3) persons to represent 26.0% of the consolidated need for an assistance group of that size. The Families First standard payment amount (maximum payment) for all assistance group sizes shall be determined as provided in T.C.A. § 71-3-105(f), as amended by Public Chapter 789 (2018).

## Public Hearing Comments

One copy of a document that satisfies T.C.A. § 4-5-222 must accompany the filing.

**One comment was received on the proposed rules from the Legal Aid Society. Legal Aid expressed concern about the Department's proposed implementing the standard of need amount, and expressed concern that the standard of need amount utilized needed to be increased.**

Response: The Department did not make a change in response to this comment. The process to change the controlling standard of need is a separate process (not involved in the current rule change) that begins with receipt of the report making recommendations regarding the controlling standard of need.

## **Regulatory Flexibility Addendum**

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process, all agencies shall conduct a review of whether a proposed rule or rule affects small business.

**This rule does not impact small businesses.**

### **Impact on Local Governments**

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (<http://publications.tnsosfiles.com/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

**This rule does not impact local governments.**

**Additional Information Required by Joint Government Operations Committee**

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

This rule implements the recently enacted provisions of Tennessee Public Chapter 789, providing for the provision of temporary incentive TANF benefits for a period of up to six months to clients and changes implemented to the Families First maximum payment amount for an assistance group of three (3) persons to represents 26.0% of the consolidated need for an assistance group of that size. The Families First standard payment amount (maximum payment) for all assistance group sizes shall be determined as provided in T.C.A. § 71-3-105(f), as amended by Public Chapter 789 (2018).

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

T.C.A. § 71-3-105(f), as amended by Public Chapter 789 (2018).

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

Clients receiving Families First benefits will be most directly affected by the rule; no clients commented on the rule during the rulemaking hearing process. Legal Aid commented favorably upon the rule, but also expressed desire that the rule also change the standard of need amounts-which is a different process.

- (D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule or the necessity to promulgate the rule;

N/A

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

No impact.

- (F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Rebekah Baker, Deputy General Counsel.

- (G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Rebekah Baker, Deputy General Counsel.

- (H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Rebekah Baker, Deputy General Counsel, 400 Deaderick Street, Nashville, TN 37243; 615-350-4153; Rebekah.A.Baker@tn.gov

- (I) Any additional information relevant to the rule proposed for continuation that the committee requests.

NA

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# Rulemaking Hearing Rule(s) Filing Form

*Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing (Tenn. Code Ann. § 4-5-205).*

*Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).*

<b>Agency/Board/Commission:</b>	Tennessee Department of Human Services
<b>Division:</b>	Family Assistance Division
<b>Contact Person:</b>	Charles Bryson, Assistant Commissioner
<b>Address:</b>	400 Deaderick Street, Nashville, TN
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**Revision Type (check all that apply):**

- Amendment  
 New  
 Repeal

**Rule(s)** (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that ALL new rule and repealed rule numbers are listed in the chart below. Please enter only ONE Rule Number/Rule Title per row)

Chapter Number	Chapter Title
1240-01-50	Financial Eligibility Requirements - Families First Program
Rule Number	Rule Title
1240-1-50-.20	Standard of Need/Income

RULES  
OF  
TENNESSEE DEPARTMENT OF HUMAN SERVICES  
FAMILY ASSISTANCE DIVISION

CHAPTER 1240-1-50  
FINANCIAL ELIGIBILITY REQUIREMENTS  
FAMILIES FIRST PROGRAM

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**1240-1-50-.01 FINANCIAL ELIGIBILITY REQUIREMENTS.** This chapter provides the policies for consideration of resources and income for all assistance groups (including legally responsible grantee relatives) applying for Families First. If any nonfinancial criterion is not met, the application may be denied without a determination of financial eligibility.

**Authority:** T.C.A. §§4-5-201 et seq., 71-1-105, Public Acts of 1996, Chapter 950, and 45 C.F.R. 233.20.  
**Administrative History:** Original rule filed December 2, 1996; effective February 15, 1997.

**1240-1-50-.02 RESOURCE ELIGIBILITY STANDARDS.** Eligibility shall exist if the value of nonexempt resources, both liquid and non-liquid assets for the AG, do not exceed \$2,000. Resources in excess of this limit result in ineligibility.

**Authority:** T.C.A. §§4-5-201 et seq., 71-1-105, Public Acts of 1996, Chapter 950, 45 C.F.R. 233.20, and §1115 of the Social Security Act. **Administrative History:** Original rule files December 2, 1996; effective February 15, 1997.

**1240-1-50-.03 APPLICATION OF RESOURCE LIMITS.** The AG shall report all resources at the time of application. The AG's resources at the time the application is filed and at each redetermination of eligibility shall be used to determined if the AG's resources meet the eligibility standard.

**Authority:** T.C.A. §§4-5-201 et seq., 71-1-105, Public Acts of 1996, Chapter 950, and 45 C.F.R. 233.20.  
**Administrative History:** Original rule filed December 2, 1996; effective February 15, 1997.

**1240-1-50-.04 VERIFICATION OF RESOURCES.** The value of resources will be verified prior to approval and at each redetermination of eligibility.

**Authority:** T.C.A. §§4-5-201 et seq., 71-1-105, Public Acts of 1996, Chapter 950, and 45 C.F.R. 233.20.  
**Administrative History:** Original rule filed December 2, 1996; effective February 15, 1997.

**1240-1-50-.05 EXEMPT RESOURCES.** In determining the resources of an AG, only the following shall be exempt:

- (1) Home And Lot.

(Rule 1240-1-50-.05, continued)

- (a) The home owned or being purchased and occupied by the Families First assistance group and the property surrounding the home which is not separated from the home by intervening property owned by others is exempt. Public rights of way (such as roads and/or other public easements) which run through the property surrounding the home do not affect its classification as homestead property. Temporary absences from the home do not affect the classification and/or exemption of the home if the assistance group has not acquired another home and intends to return to the exempted home at a specified time. Proceeds from the sale of homestead property or from a recovery due to a casualty/disaster loss of same, will remain exempt for three months following receipt of the proceeds if the AG expresses an intent to reinvest in the same homestead or in a substitute homestead.

(2) Other Property .

- (a) Basic Maintenance Items. Excluded are basic maintenance items essential to daily living such as clothing, furniture, appliances, and other similar essential household goods and equipment of limited value.
- (b) Certain Real Property. Real property which is not exempted as a homestead pursuant to 1240-1-50-.05(1) is exempt as a resource if the recipient is making a good faith effort to sell and signs an agreement to repay the Families First grant received during the period of exemption. Exemption of the property, not to exceed nine (9) months, causes an overpayment except when the net proceeds plus other resources at the beginning of the exclusion period are within the resource limit.

Repayment of the grant is made from the sale proceeds not to exceed the total of the net proceeds. Any proceeds remaining after repayment of the grant is considered a resource.

If assistance is terminated for any reason prior to the end of the 9-month exemption period, the assistance group has an overpayment subject to the usual collection procedures.

- (c) Burial Plots. One burial plot for each family member may be excluded from consideration as a resources.

(3) Exempt Vehicles .

- (a) One operable family motor vehicle used to provide transportation of persons or goods in which the equity value is \$4,600 or less.
  - 1. Equity is determined by deducting the amount of encumbrances from the fair market value. Fair market value is the value listed in the N.A.D.A. Used Car Guide.
  - 2. If a vehicle is not listed in the N.A.D.A. Guide, or its value is claimed to be different from the value listed, its value may be taken as that stated by one reputable automobile dealer.
- (b) Equity value over \$4,600 of one vehicle, and equity value of all other vehicles owned by an AG member will be counted as a resource to the AG and will be applied to the \$2,000 resource limit set forth in 1240-1-50-.02.

- (4) Burial Policies. Burial policies (not prepaid burial agreements) shall be considered exempt for resource purposes.

(Rule 1240-1-50-.05, continued)

- (5) Pension Funds. The cash value of pension plans or funds shall be exempt.
- (6) Inaccessible Resources. The cash value of resources which are not currently accessible to the assistance group or which cannot reasonably be brought to a condition of current availability are exempt. Nonavailability of such resources must be determined prior to approval and at each redetermination of eligibility. Also, resources whose cash value is not accessible to the AG are exempt, such as, but not limited to: security deposits on rental property or utilities; property in probate; real property which the AG is making a good faith effort to sell at a reasonable price and which has not been sold; and jointly owned resources determined to be inaccessible.
  - (a) Irrevocable Trust Funds
    1. When a person applying for or receiving Families First has a trust which is claimed as inaccessible, she/he (or in the case of a child, his/her parent or other relative caring for him/her) will have 60 days from the date of application/redetermination, or from the time the trust is reported/discovered to attempt to have this resource made currently available. The following are exceptions:
      - (i) If the trust is established by a will, the terms of the trust will be followed as written; or
      - (ii) If a trust is producing regular income which is available to the beneficiary, the body of the trust will not be considered a currently available resource, but the income will be counted in the determination of eligibility/amount of payment.
      - (iii) If a trust has been set up for a minor (usually until age 18) and the amount of the trust account is \$5000 or less, the caretaker will not be required to attempt to make the trust accessible. In most instances, the legal fees involved in such an attempt would erode the value of the trust to the extent that it would not be cost effective to bring it to a state of availability.
    2. If the caretaker is willing to seek to have the trust made currently available, he/she may be included in the assistance unit. If such a person does not initiate action to make the trust available within 60 days, the caretaker will be removed from the assistance group.
    3. If the caretaker has initiated the necessary action, assistance may be continued pending further orders of the court. The court's decision, as written in a new or amended order, will be binding. If all or part of the funds in trust are made available at any time, they must be taken into account when received.
  - (b) Prepaid Burial Agreements or Burial Trusts. Exclude one burial agreement with equity value of \$1500 or less (whether revocable or irrevocable) per family member as a resource.
  - (c) Equipment. Equipment used in a self-employed enterprise to produce income is considered an inaccessible resource.
- (7) Resources Excluded By Law. The following types of payments are excluded by law from consideration as income or as resources in the determination of eligibility and level of benefit:

(Rule 1240-1-50-.05, continued)

- (a) Relocation Assistance Payments. Relocation payments received under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 are excluded.
  - (b) Alaska Native Claims Payments and Sac and Fox Indian Claim Payments received under the Alaska Native Claims Settlement Act, PL 92-203, §21(a) and the Sac and Fox Indian Claims Agreement, PL 94-189 are excluded.
  - (c) Payments for Certain Indian Tribes. Payments derived from certain submarginal lands of the United States which are held in trust for certain Indian Tribes are excluded.
  - (d) Job Training and Partnership Act. Payments received pursuant to the Job Training and Partnership Act (JTPA).
  - (e) Payments from Disposition of Funds of Ottawa Indians. Payments made to the Grande River of Ottawa Indians under PL 94-540 are excluded.
  - (f) Student Grants and Loans. Education grants and loans to Families First AG members (or stepparents or parents of a minor in the home) are excluded.
  - (g) Energy Assistance Payments. Any payments or allowance made by any federal, state or local organization for the purpose of energy assistance are not counted.
  - (h) Domestic Volunteer Service Act. Payments received by volunteers for services performed in programs stipulated in the Domestic Volunteer Service Act of 1973 as amended are excluded.
  - (i) Payments from Crisis Intervention Program. One-time payments to assist with utility costs from the Crisis Intervention Program are excluded.
  - (j) Benefits from Food Programs. The following benefits from food programs are excluded:
    - 1. WIC;
    - 2. Value of Food Stamps;
    - 3. Value of school lunches or other school food programs.
  - (k) Allowances paid under PL 104-204 to children of Vietnam veterans who are born with spina bifida are excluded.
- (8) Resources Of Non-AG Members. Resources of non-AG members, other than those who are disqualified because of an intentional program violation or a Families First Employment and Training Program sanction, are excluded.
- (9) Other Exempt Resources.
- (a) Earmarked Resources. Any governmental payments which are designated for the restoration of the home which has been damaged in a disaster if the household is subject to a legal sanction if the funds are not used as intended are exempt.
  - (b) Prorated Income. Resources, such as those of students or self-employed persons, which have been prorated and counted as income, are exempt.

(Rule 1240-1-50-.05, continued)

- (c) Indian Lands. Indian lands held jointly with the tribe, or land that can be sold only with the approval of the Bureau of Indian Affairs are exempt.
  - (d) Livestock and poultry consumed as home produce.
  - (e) Up to \$5,000 in profits from a business enterprise may be placed in escrow in a Low Income Entrepreneurial Escrow Account with a micro-lending intermediary program and shall be excluded as a resource; interest earned by such funds shall also be excluded.
  - (f) Proceeds from the sale of exempt property if received as a lump sum will be exempt for a period of up to three (3) months following the sale if intended to be used to replace the exempt resource.
  - (g) Up to \$5,000 in an Individual Development Account for career development goals for a Families First recipient who is a part of an Individual Development Account Pilot Project.
- (10) Handling Of Excluded Funds.
- (a) Excluded liquid assets that are kept in a separate account and that are not commingled in an account with non-excluded funds, shall retain their resource exclusion for an unlimited period of time.
  - (b) Resources which have been excluded as prorated income that are commingled in an account with non-excluded funds shall retain their exclusion for the period of time over which they have been prorated as income (i.e., they will not be counted as both income and resources during the same period of time).
  - (c) All other excluded monies which are commingled with non-excluded funds shall retain their exemption for six months from the date they are commingled. After six months all funds in the commingled account other than those in (a) above are counted as a resource.

**Authority:** T.C.A. §§4-5-201 et seq., 71-1-105, 71-3-154(a)(2), 71-3-155(d), 38 USC §1805(d), 42 USC §1315(a), Public Acts of 1996, Chapter 950, 45 C.F.R. 233.20, 45 CFR 233.20(a)(3)-(7), (11), PL 104-204 §421(b), and §1115 of the Social Security Act. **Administrative History:** Original rule filed December 2, 1996; effective February 15, 1997. Amendment filed July 5, 2002; effective September 18, 2002.

**1240-1-50-.06 COUNTABLE RESOURCES.** The fair market value of liquid resources and the fair market value less encumbrances (equity) of non-liquid resources are used to determine the total countable resources available to the AG.

- (1) The Following Are Counted As Liquid Resources:
- (a) Cash on hand.
  - (b) A checking or savings account in a bank or other savings institution including credit union. (In a checking account, only that amount which exceeds known monthly income is counted as a resource.)
  - (c) Savings certificates.
  - (d) Stocks and bonds.

(Rule 1240-1-50-.06, continued)

- (e) Burial Agreements. Count the equity value in excess of \$1,500 of one burial agreement per assistance unit member if the burial agreement is revocable and accessible.
  - (f) Proceeds from the sale of exempt property, which was received as a lump sum and intended to be used to replace the exempt resource, if retained longer than three (3) months.
  - (g) Proceeds from estate settlement, if received as a lump sum.
  - (h) Individual Retirement Accounts (IRAs and Keogh Plans). The cash value, minus any penalty for early withdrawal, of IRAs and funds in Keogh plans shall be considered accessible resources, unless the AG can establish otherwise.
  - (i) Other Non-Recurring Lump Sum/Retroactive Payments. Lump sum liquid resources such as the following are considered a resource in the month received, unless specifically excluded from consideration as a resource by other federal laws and regulations;
    - 1. Retroactive Payments such as RSDI, Veterans Benefits, Unemployment Compensation and Workers Compensation;
    - 2. Windfalls, cash gifts, prizes and awards;
    - 3. Income tax refunds;
    - 4. Tax rebates and credits;
    - 5. Refunds of security deposits on rental property or utilities;
    - 6. Vacation pay withdrawn in a lump sum payment by an employee who has been laid off. If the employee chooses not to withdraw his/her vacation pay and leaves the vacation time with the employer in case he/she is called back to work, the value of the vacation pay is counted as a resource.
  - (j) Resources of Non-AG Members. Resources of individuals disqualified because of an intentional program violation or a Families First Employment and Training program sanction count in their entirety to the remaining AG members.
- (2) Countable Non-Liquid Resources.
- (a) Unless otherwise exempt, the equity in all non-liquid resources shall be counted as a resource. Examples are as follows:
    - 1. Non-exempt licensed and unlicensed vehicles;
    - 2. Non-exempt buildings;
    - 3. Non-exempt land;
    - 4. Recreational properties;
    - 5. Property such as boats, vacation homes and mobile homes, or other property not specifically excluded;

(Rule 1240-1-50-.06, continued)

6. Non-exempt personal property; and
7. Insurance policies:
  - (i) The total cash value of all policies is considered in relation to the personal property reserve.
  - (ii) The owner of insurance is considered to be the insured person named in the policy, unless otherwise specified by the insurance company.
- (b) Resources of individuals disqualified because of an intentional program violation or a Families First Employment and Training program sanction count in their entirety to the remaining AG members.

**Authority:** T.C.A. §§4-5-201 et seq., 71-1-105, Public Acts of 1996, Chapter 950, 45 C.F.R. 233.20, and §1115 of the Social Security Act. **Administrative History:** Original rule filed December 2, 1996; effective February 15, 1997.

#### 1240-1-50-.07 SPECIAL RESOURCE SITUATIONS.

- (1) Jointly Owned Resources. An individual's pro rata share of jointly owned resources will be considered as available unless such resources are inaccessible.
  - (a) When the individual can demonstrate that he/she has access to less than a pro rata share, only the portion to which he/she has access will be counted toward the assistance group's resource level.
  - (b) Resources are considered inaccessible to the assistance group if they cannot be practically subdivided and access to their value is dependent on the agreement of the joint owner who refuses to comply.
  - (c) When determining the AG's resource level, ineligible aliens residing with the household shall be considered household members. The resources of an ineligible alien will be counted only when the ineligible alien is the parent or spouse of an AG member.
  - (d) Real property that the AG cannot sell because it only has a life estate, use rights, lifetime occupancy, or dower rights, shall also be considered inaccessible to the AG.
  - (e) Victims Compensation Awards.
    1. Victims Compensation Awards paid in behalf of minors will be treated as irrevocable trusts if:
      - (i) the minor's parent, other caretaker relative or guardian entered into an agreement with the State Claims Commission as to the uses to be made of the funds and signed such an agreement; and
      - (ii) the funds are deposited in accordance with the agreement; and
      - (iii) the funds remain on deposit or are used only according to the terms of the agreement. Any funds withdrawn and used for goods/services not specified in the agreement will be treated as income in the month received.
    2. Victims Compensation Awards paid to adults (age 18 or older) in their own behalf will continue to be treated as non-recurring lump sums.

(Rule 1240-1-50-.07, continued)

(2) Resources Of Legally Responsible Relatives.

(a) The availability of a resource often depends on the individual's legal right to share property which may be in the possession of another person. Therefore, the following rules apply to the treatment of resources of legally responsible relatives of an A/R who live in the home with him/her.

1. Resources of a spouse.

(i) Real and personal property belonging to the spouse of a relative other than a parent of the dependent child(ren) are not deemed to the assistance group. Real and personal property belonging exclusively to an SSI beneficiary is totally disregarded in determining the eligibility of his/her spouse and the AG in which his/her spouse is included. If property is jointly owned, that portion of the property which belongs to the SSI beneficiary is disregarded. If the proportionate share cannot be determined, the property is considered available in its entirety to each.

(ii) In stepparent situations, real and personal property belonging exclusively to a stepparent is considered available to the assistance group only when the stepparent is included in the AG.

2. Minor Recipients.

(i) When a minor in the AG lives with his/her parent(s), the resources of the parent(s) are not deemed to the AG which includes the minor unless the parent(s) are also included in that unit. Resources belonging to an SSI beneficiary parent of a child in the AG are disregarded.

The resources of a child are not considered available to his/her parents or siblings unless the child is included in the AG.

(ii) When the A/R is a minor living with a relative other than a parent, the resources of the relative are not considered available to the A/R or the A/R's child unless the relative is included in the AG.

The resources of a stepparent are not considered available to a child unless the stepparent is included in the AG.

3. Other Relatives. The resources of relatives other than a parent are not considered available to the child(ren) in the AG unless the relative is included in the AG. If resources of a relative exceed defined limits, neither the grantee relative nor the grantee relative's spouse may be included in the AG.

**Authority:** T.C.A. §§4-5-201 et seq., 71-1-105, Public Acts of 1996, Chapter 950, and 45 C.F.R. 233.20.

**Administrative History:** Original rule filed December 2, 1996; effective February 15, 1997.

**1240-1-50-.08 INCOME.** The following sections describe the treatment of income and budgeting to determine eligibility and level of benefits.

(1) General Policy. All sources of income are to be explored and gross nonexempt income from all sources shall be verified prior to approval or continuation of benefits. The applicant/recipient has primary responsibility for providing acceptable verification of income; the worker will secure the verifications when the information is available to the agency

(Rule 1240-1-50-.08, continued)

through existing automated sources, or when it is more reasonable to the Department to secure the information.

- (2) Requirement To Apply For Other Benefits. As a condition of eligibility for Families First, a person who is reasonably certain to be entitled to any other cash benefit or tax credit (other than SSI) must apply for and accept such benefit or tax credit for himself/herself and/or any member of the AG. Failure to apply for or to accept the benefit renders the applicant/grantee relative ineligible to be included as a member of the AG. His/her needs may not be taken into consideration in the Families First budget, and his/her income must be considered available to the remaining AG.

**Authority:** T.C.A. §§4-5-201 et seq., 71-1-105, Public Acts of 1996, Chapter 950, and 45 C.F.R. 233.20.

**Administrative History:** Original rule filed December 2, 1996; effective February 15, 1997.

#### 1240-1-50-.09 INCOME ELIGIBILITY STANDARDS.

- (1) Gross income as defined is tested against a Gross Income Standard (GIS) which is 185% of the Consolidated Need Standard for the appropriate number of people. If the gross income is greater than this standard by any amount, the family/individual is not eligible for Families First. If gross income is equal to or less than the GIS for the appropriate number of people, then net income is computed and this amount is used to determine eligibility and amount of payment. If there is a deficit of \$1.00 or more between the need standard and net income, eligibility on this basis exists. Payment is the lesser of the deficit or a standard payment amount (maximum payment) for the family size, except that no payment can be made in a monthly amount less than \$10.00.

**Authority:** T.C.A. §§4-5-201 et seq., 71-1-105, Public Acts of 1996, Chapter 950, and 45 C.F.R. 233.20.

**Administrative History:** Original rule filed December 2, 1996; effective February 15, 1997.

**1240-1-50-.10 DEFINITION OF INCOME.** Assistance Group income shall mean all monies from whatever source, earned or unearned, except the exclusions listed in 1240-1-50-.11.

- (1) Earned Income. Earned income is income which is derived from the work efforts of an individual as wages, salaries, commissions, or as profits from self-employment enterprise, including farming, carried on either alone or jointly. It includes bonuses, vacation pay, pay received while on maternity leave and sick pay when mandatory deductions are made. Garnished or diverted wages, etc. are also considered in determining gross earned income. The following types of income are considered earned income:
  - (a) Wages, salaries, commissions;
  - (b) Profit from self-employment enterprise such as:
    1. Farming;
    2. Small business enterprises;
    3. Roomers/boarders;
    4. Rental receipts. Receipts from rental property owned/being purchased by an individual when he/she is actively engaged in the production of the income are earned income.
    5. Total gains of any capital goods or equipment related to the business, excluding the costs of doing business.

(Rule 1240-1-50-.10, continued)

- (c) Training and rehabilitation allowances. Any wages paid for on-the-job training or public service empl
  - (d) Severance pay;
  - (e) Vacation, sick, longevity and bonus pay, when mandatory deductions are made;
  - (f) Allowances and other benefits under the National and Community Service Trust Act of 1993.
- (2) Unearned Income. Unearned income is any income which does not meet the definition of earned income. No earned income exclusions or deductions may be applied to unearned income. Unearned income includes, but is not limited to:
- (a) Unemployment compensation.
  - (b) Workman's (workers) compensation.
  - (c) Vacation, sick, longevity and bonus pay when mandatory deductions are not made.
  - (d) Interest, dividends, royalties and all other direct money payments which can be construed to be a gain or benefit.
  - (e) Assistance payments or other need based payments not otherwise excluded.
  - (f) Pensions and benefits such as annuities, retirement, veterans, disability, Social Security, military or Job Corps allotments.
  - (g) Child support and alimony.
  - (h) Regular cash contributions.
  - (i) Money withdrawn from the body of a trust or interest/dividends paid to an A/R.
  - (j) Non-IV-E foster care board payments made on behalf of a minor mother who receives Families First for her own child. If the child of the minor parent is also in foster care on non-IV-E funds, his/her board payment must also be counted as unearned income.
  - (k) Rehabilitation payments made under Services to the Blind or Vocational Rehabilitation or other such programs are unearned income. Costs directly associated with a rehabilitation program and borne by a participant are deducted from the gross payment and the remainder is income.

**Authority:** T.C.A. §§4-5-201 et seq., 71-1-105, Public Acts of 1996, Chapter 950, and 45 C.F.R. 233.20.

**Administrative History:** Original rule filed December 2, 1996; effective February 15, 1997.

**1240-1-50-.11 PAYMENTS/BENEFITS EXCLUDED IN ELIGIBILITY DETERMINATION.** Certain payments and benefits are excluded under federal law/regulation from consideration as income in determining eligibility for Families First.

- (1) Relocation Assistance Payments received under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.
- (2) Any funds distributed per capita to or held in trust for members of any Indian tribe under PL 92-254, PL 93-134 or PL 94-540.

(Rule 1240-1-50-11, continued)

- (3) Payments received under the Alaska Native Claims Settlement Act (PL 92-203, §21(a)) payments by the Indian Claims Commission to the Confederated Tribes and Bands of the Yakima Indian Nation or the Apache Tribe of the Mescalara Reservation (PL 95-443); payments to the Passamaquoddy Tribe and the Penobscot Nation or any of their members received pursuant to the Maine Indians Claims Settlement Act of 1980 (PL 96-429, §5); payments of relocation assistance to members of the Navajo and Hopi Tribes (PL 93-531).
- (4) Receipts distributed to members of certain Indian tribes referred to in §6, PL 94-114.
- (5) Benefits received from the Nutrition Programs for the Elderly (Title VII) under the Older Americans Act of 1965.
- (6) The value of supplemental food assistance received under the Child Nutrition Act of 1966 (WIC), as amended, and the special food service program for children under the National School Lunch Act, as amended.
- (7) Payments for supportive services and reimbursements of out-of-pocket expenses made to individual volunteers serving as health aids, senior companions, RSVP foster grandparents and any other programs under Title II pursuant to §418 of PL 93-113.
- (8) VISTA payments, when the total amount of payments, adjusted for hours served, is determined by the Chief Executive Officer of the Corporation for National and Community Service to be less than the minimum wage.
- (9) Job Training Partnership Act (JTPA) Payments for Dependent Children, as follows:
  - (a) Exclude JTPA earned income (wages and compensation in lieu of wages) for a dependent child applicant or recipient for up to six months per calendar year in the Gross Income Standard (GIS) test and in computing the grant.
  - (b) Exclude all unearned JTPA needs based and supportive service payments.
- (10) JTPA Payment for Other than Dependent Children, as follows:
  - (a) Exclude unearned payment in determining eligibility and amount of assistance if paid for one of the following reasons:
    1. Supportive services such as transportation, child care, medical and other services needed to enable the individual to work.
    2. Assistance payments for needs other than those covered by the Families First grant amount, or for unmet need.
- (11) Experimental Housing Allowance Program payments made under annual contribution contracts entered into prior to January 1, 1975 under §23 of the US Housing Act of 1937, as amended.
- (12) Nazi Persecution Payments.
- (13) Educational grants, loans, scholarships, stipends and/or college work study payments made to or in behalf of a Families First AG member (or a stepparent in the home or parent in the home of a minor Families First parent) in determining eligibility and amount of payment.

(Rule 1240-1-50-.11, continued)

- (14) Child Support Bonus Payment. Exclude the first \$50 per month received by the family on a currently obligated child support collection.
- (15) Energy Assistance Payments made by any Federal, State, Local agency or charitable organization to meet energy assistance needs.
- (16) Agent Orange Settlement Payments.
- (17) Earned Income Tax Credits (EITC).
- (18) Certain benefits and payments are not defined as income for Families First eligibility purposes:
  - (a) Cash items.
    1. Business costs of producing self-employment income such as but not limited to:
      - (i) Wages, salaries, benefits paid to/for employees;
      - (ii) Inventories and supplies;
      - (iii) Seeds, fertilizer, pesticides, herbicides, etc.;
      - (iv) Utilities at place of business.
    2. Clothing allowance for disabled veterans intended for additional clothing needs resulting from the use of prosthetic or orthopedic devices.
    3. Educational grants, loans, scholarships, stipends, and/or work study payment made to or in behalf of a Families First AG member, or stepparent in the home or parent of a minor parent in the home.
    4. Foster Care board payments made to foster parents for the care of a foster child by a child placing agency. A service fee paid to foster parents, is however, income. This is an amount paid to the foster parents for providing care and is in addition to the board payment.
    5. Legally obligated payments otherwise payable to an AG which are diverted by the provider to a third party, unless this arrangement is made at the request of an AG member.
    6. Loans which represent an obligation and not a benefit such as chattel mortgages and personal notes. Such loans may be provided by an individual or by a commercial lending institution.
    7. Monies received and used for the care and maintenance of a non-assistance group member who is not the parent, spouse, or stepparent of a dependent child living in the home.
      - (i) Payments for multiple beneficiaries are to be prorated evenly among the intended beneficiaries to determine individual shares. If intended beneficiaries include both AG and non-AG members, the individual shares of the AG members (their responsible relatives) will be considered income to the AG/relative.

(Rule 1240-1-50-.11, continued)

8. Income belonging to non-AG members, unless they are parents, spouses, or stepparents of AG members in the home.
  9. Reimbursements for out-of-pocket expenses incurred (or to be incurred) by volunteers and/or employees in the performance of their duties.
  10. Retroactive Families First and SSI payments.
  11. Payments that are made either directly to Families First recipients or to a third party for rent or utilities under Section 8 of the US Housing Act.
  12. Payments for utilities made to or on behalf of Families First recipients through any federal, state, or local energy assistance plan.
  13. Support payments (child and related spousal support) received by an AG but transferred to the IV-D agency as assigned support.
  14. That portion of payments made by Vocational Rehabilitation which represents a direct cost to an individual for participation in that program.
  15. Casual and inconsequential income (monetary gifts/contributions) not exceeding \$30 per quarter received by each Families First recipient.
  16. Recoupments withheld by the provider to repay a prior overpayment.
- (b) Non-Cash Items. Any gain or benefit not in the form of money payable directly to an AG such as non-monetary or in-kind benefits.
- (19) Allowances paid under PL 104-204 to children of Vietnam veterans who are born with spina bifida.

**Authority:** T.C.A. §§4-5-201 et seq., 71-1-105, 71-3-154(a)(5), 38 USC §1805(d), 42 USC §1315(a), Public Acts of 1996, Chapter 950, 45 C.F.R. 233.20, and PL 104-204 §421(b). **Administrative History:** Original rule filed December 2, 1996; effective February 15, 1997. Amendment filed July 5, 2002; effective September 18, 2002.

**1240-1-50-.12 INCOME INCLUDED IN THE ELIGIBILITY DETERMINATION.** Except for the payments/benefits specifically excluded above, all other payments received by AG members (including a parent, spouse or stepparent living in the home) are treated as income in the determination of eligibility and level of benefits in the Families First program.

**Authority:** T.C.A. §§4-5-201 et seq., 71-1-105, Public Acts of 1996, Chapter 950, and 45 C.F.R. 233.20. **Administrative History:** Original rule filed December 2, 1996; effective February 15, 1997.

**1240-1-50-.13 DETERMINATION OF AVAILABLE INCOME.** The amount of income available to meet maintenance needs is to be determined in establishing eligibility for Families First benefits in accordance with definitions given previously and in accordance with the instructions given in chapters 1240-1-50-.13(1) through 1240-1-50-.20. Currently available income as defined (except that specifically excluded, disregarded, or deducted), is considered in the determination of eligibility and amount of payment.

- (1) Projecting Income. A prospective method of determining eligibility and payment in the Families First program is used.
  - (a) At the time of case action a decision is made concerning the amount of income to be considered available for a future period. The worker anticipates monthly income the

(Rule 1240-1-50-.13, continued)

AG will have in the coming month and uses this figure to calculate the amount of benefits.

- (b) Anticipating Income. At the time of application/redetermination an AG may expect changes in circumstances to occur in the future; in particular, changes relating to the receipt of income.
  - 1. Only currently available income will be used to project the amount of ongoing available income unless the amount and date of receipt of expected income is known with reasonable certainty or unless some change has occurred. If the exact amount/month of receipt of the income is not known, only that portion of it which can reasonably be anticipated shall be considered as income.
- (c) When any change in AG circumstances is expected, including a change in income, the AG will be required to report the change within 10 days of the change.
  - 1. Counting Anticipated Income in Month Received. Income anticipated with reasonable certainty during the period under consideration shall be counted as income only in the month(s) it is expected to be received, unless the income is averaged or prorated.
  - 2. Income in Past 60 Days. Income received during the past 60 days shall be used as an indicator of anticipated income. However, past income shall not be used for any month in which a change in income has occurred or can be anticipated.
    - (i) If income fluctuates to the extent that a 60-day period alone cannot provide an accurate indication of anticipated income, the worker and the AG may use a longer period of time if it will provide an accurate indication of anticipated fluctuations in future income.
    - (ii) Similarly, if the family's income fluctuates seasonally, it may be appropriate to use the most recent season comparable to the time of year, rather than the last 60 days, as one indicator for the time of year.
    - (iii) In no event shall the worker automatically attribute to the AG the amounts of any past income. Past income shall not be used as an indicator of anticipated income when changes in income have occurred or are anticipated to occur.
  - 3. Recurring Monthly Benefits. Recipients of state or federal benefits such as SSI or Social Security benefits shall not have their monthly income from such sources varied merely because mailing cycles may cause two payments to be received in one calendar month and none in the next month.
  - 4. Withheld Wages. Wages held at the request of the employee shall be considered income to the AG in the month the wages would otherwise have been paid by the employer. Wages held by the employer as a general practice, even if in violation of the law, are not counted as income to the AG unless an AG anticipates that it will ask for and receive an advance, or an AG anticipates that it will receive income from previously withheld wages not previously counted as income. Advances on wages shall only count as income if reasonably anticipated.
- (2) Converting Income To Monthly Amounts. Since need determination and calculation of benefit amount are made on a monthly basis, income and expenses available to an AG must be

(Rule 1240-1-50-.13, continued)

stated in monthly amounts. The following methods will be used to convert income to monthly amounts.

- (a) Hourly or Piece Work Wages. Estimate the amount of income to be expected as the result of a week's work based on hours/days produced. Use the weekly earnings figure to determine monthly income.
  - (b) Weekly Income. Multiply weekly income by 4.3 to determine monthly income.
  - (c) Bi-Weekly Income. Multiply amount received each two weeks by 2.15 to determine monthly income.
  - (d) Semi-Monthly Income. Add the two amounts received to determine monthly income.
  - (e) Monthly Income. When a wage earner is employed and paid on a monthly basis accept his/her verified monthly wage/salary as monthly income.
  - (f) Annual Income. Income which is received annually, or which is an integral part of annual income will be totaled and prorated over 12 months. Such income is usually earned income derived from a farming or other self-employment enterprise. Income which by contract or otherwise could be generally considered as annual income, but which is received in a shorter period of time will be considered as income in the months during which it is received. An estimated average income from migrant labor, seasonal farm work, and other seasonal employment will be considered during the months such income is received.
- (3) Rounding/Truncating. If the difference between need and income is not a whole dollar amount, when the deficit is less than the maximum grant for that family size, round to the next lower dollar to determine the Families First grant amount.
  - (4) Income At Application.
    - (a) Income in Application Month. The eligibility and level of benefits for AGs submitting an initial application will be based on circumstances for the entire calendar month in which the AG filed its application. The income received during the application month (i.e., that already received by the day of application plus that which is anticipated with reasonable certainty to be received in that month) is used to determine initial eligibility and the benefit amount for that one (1) month.
    - (b) Effects of Changes During the Application Processing Period. An AG may be eligible in the application month based on circumstances existing in that month, but ineligible in the subsequent month because of changes which occur. The AG is entitled to benefits for the application month even when the processing of the application results in benefits being issued/paid in the subsequent month. An AG may be ineligible in the application month based on circumstances existing in that month, but eligible in the subsequent month because of changes which occur. The application must be denied so that the AG will receive proper notice within application processing time limits. A new application must be filed so that eligibility can be determined for the period following the period the AG was ineligible.
  - (5) Anticipated Changes And Benefit Amounts. Adjustments in the Families First grant are made on the basis of reported or discovered changes. The grant amount for the month of application will differ from the grant amount in subsequent months. If a change in income is reported and the change is ongoing, the new amount is to be used to project future ongoing

(Rule 1240-1-50-.13, continued)

income. If income fluctuates, an estimated average monthly income will be established and this amount will be considered in the determination of eligibility and the amount of payment.

- (6) **Income At Redetermination.** Eligibility and amount of payment at the time of redetermination will be based on circumstances which prevail at that time. Currently available income will be used to project the average amount of income to be available in the coming months.
- (7) **Consideration Of Income Belonging To Particular Individuals.** The income of all persons who share a living arrangement must be explored, but all individuals' incomes may or may not be considered in the determination of eligibility and amount of payment as described below:
  - (a) **The countable gross income, earned and unearned, of all assistance group members and their responsible relatives in the home plus the deemed income of a stepparent living in the home and of a parent of a minor parent living in the home must be considered as available.** The gross amount is tested against the Gross Income Standard (185% of the appropriate consolidated need standard for the family size). If the gross amount is less than the GIS, the countable net income for the AG is compared to the CNS for the family to determine eligibility and amount of payment. No income of parents and spouses is diverted to their ineligible dependents living in the home except in the deeming budgets of stepparents and parents of minor parents living in the home.
  - (b) **Legal Spouses.** The income belonging to one or both members of a legally married couple is considered available to each other as long as they are living together, except the income of a spouse who is an SSI recipient is disregarded in determining the other spouse's eligibility. If a couple presents themselves as married they are to be considered as married. If they later claim to not be legally married, the burden of proof of their unmarried status will be upon the couple.
    1. **Exception.** When a Families First custodial parent marries during receipt of assistance, exception at 1240-1-47-.23(5)(d) applies.
  - (c) **Parents.** Parents living in the home with the dependent child(ren) must be included in the AG and/or their total income counted as available in its entirety unless the parent is an SSI recipient. However, in the case of an ineligible alien parent living in the home with his/her dependent child, income is deemed to the eligible dependent child using the stepparent deeming formula in (d) 1.-6. below.
    1. **Exception.** When a Families First custodial parent marries during receipt of assistance, exception at 1240-1-47-.23(5)(d) applies.
  - (d) **Stepparents/Parents of Minor Parents.** Income shall be deemed available to AG members from a stepparent living in the home with a stepchild for whom assistance is requested, and from a parent living in the home with a minor parent who has requested assistance in his/her own right for a child in his/her care.
    1. **The amount of income to be deemed is determined as follows:**
      - (i) **Determine gross monthly income as defined for Families First;**
      - (ii) **Deduct the flat work expense amount of \$150 from earned income only;**
      - (iii) **Deduct the appropriate Consolidated Need Standard (CNS) for the stepparent or parent and his legal dependents (for IRS tax purposes) living in the home who are not included in the AG. (If the stepparent's or**

(Rule 1240-1-50-.13, continued)

- parent's income is not taxable, use those individuals he/she could claim under IRS rules.);
- (iv) Deduct amounts actually paid to individuals not living in the home who are (or could be) claimed by the stepparent or parent as dependents for income tax purposes; and
  - (v) Deduct amounts actually paid for alimony or child support to individuals not living in the home other than those covered in step 4. above;
  - (vi) The remainder is income deemed to the stepchildren or minor children (or child of an illegal alien) as appropriate.
2. Exception. When a Families First custodial parent marries during receipt of assistance, exception at 1240-1-47-.23(5)(d) applies.
- (e) Income of Children. Income that a technically ineligible child (i.e., a child who does not meet the age, deprivation, relationship, citizenship requirements) has in his/her own right, including "earmarked" income such as Social Security benefits, or which is specifically designated for a particular child, such as child support, is not considered available to the AG. The child's own income is, however, considered available to his/her own children in the home.
  - (f) Applicant/Grantee Relatives Other than Parents. The income of a relative other than the parent(s) of children for whom Families First is requested or received is counted in determining eligibility and amount of payment for the children only when the relative is included in the AG. When the grantee relative is included in the AG, all of the income of that relative's spouse living in the home must be considered available to the AG.
- (8) Individuals Whose Income Is Not To Be Considered.
- (a) SSI recipients.
  - (b) Ineligible relatives other than parents/stepparents as long as they are not included in the AG.
  - (c) Unrelated household members.
  - (d) Individuals living outside the home.
- (9) Deductions From Gross Income. The only deductions from gross income which are permitted in determining net income are:
- (a) The earned income disregards, where applicable;
  - (b) Income which has been excluded from consideration will not be taken into account in determining need and amount of assistance for any other individual.

**Authority:** T.C.A. §§4-5-201 et seq., 71-1-105, 71-3-154, 71-3-155, 42 USC §1315(a), Public Acts of 1996, Chapter 950, 45 C.F.R. 233.20, 45 CFR 233.20(a)(1)-(7), and (11), and §1115 of the Social Security Act. **Administrative History:** Original rule filed December 2, 1996; effective February 15, 1997. Amendment filed July 5, 2002; effective September 18, 2002.

**1240-1-50-.14 TREATMENT OF UNEARNED INCOME.** Unearned income is money which is received for reasons other than the current work efforts of an individual. No earned income exclusions or work expense deductions may be applied to unearned income as defined.

**Authority:** T.C.A. §§4-5-201 et seq., 71-1-105, Public Acts of 1996, Chapter 950, and 45 C.F.R. 233.20.  
**Administrative History:** Original rule filed December 2, 1996; effective February 15, 1997.

**1240-1-50-.15 TREATMENT OF EARNED INCOME.**

- (1) Earned income is defined as that total income which an AG earns by its own work efforts; either salary, wages or commissions paid to the AG as an employee, or profits from self-employment in an enterprise (including farming) which it may carry on independently or jointly with another person or persons. It includes earnings over a period of time from which settlement is made at one given time. It includes paid annual leave, vacation time, sick leave, pay while on maternity leave, and bonuses when they are subject to Income Tax and FICA.
- (2) All gross earned income, received or anticipated for members of the assistance group is considered available in relation to the gross income standard (GIS), with the following exceptions:
  - (a) Only the deemed income of a stepparent or of a parent of a minor parent receiving Families First in his or her own right is considered available (when the stepparent or parent of a minor parent is in the home);
  - (b) Job Training Partnership Act earnings of a child recipient or other type earnings of a full-time student during the six month exclusion period are not considered available;
  - (c) EITC payments are excluded, whether received as a monthly amount or as an annual amount.

**Authority:** T.C.A. §§4-5-201 et seq., 71-1-105, Public Acts of 1996, Chapter 950, and 45 C.F.R. 233.20.  
**Administrative History:** Original rule filed December 2, 1996; effective February 15, 1997.

**1240-1-50-.16 DETERMINATION OF NET INCOME.**

- (1) Net income is that which is available to determine need and/or amount of assistance after application of all appropriate exclusions and disregards.
  - (a) Excluded income is not counted in determining financial eligibility based on the Gross Income Standard (GIS) test or in computing the grant amount.
  - (b) Disregarded income is that portion of earned income which is subtracted from gross earnings (or net gross earnings from self-employment) in arriving at net countable income. Disregarded income includes:
    1. The earnings of a child recipient who is a full-time student or part-time student working less than full-time, if the GIS test is met. The child's earnings are combined with the rest of the AG's gross countable income to determine whether the total family income exceeds the GIS;
    2. A flat work expense of \$150, and child/dependent care.
  - (c) Net Income is determined, as follows; the requirements of each step must be met before progressing to the next step:

(Rule 1240-1-50-.16, continued)

1. Determine the total gross income (or net gross income from self-employment) for all members of the AG and any sanctioned and/or disqualified individuals;
  2. Exclude excludable income;
  3. Compare the total countable gross income (earned and unearned) to the GIS for the AG size. If gross income exceeds the GIS, the AG is ineligible; if gross income is less than or equal to the GIS; continue.
  4. Disregard earnings of a child recipient with student status (full-time student or part-time student not working full-time) who is no longer eligible for the six month earned income exclusion.
  5. Apply earned income disregards to the earnings of each individual with earnings in the following order:
    - (i) Earned income disregard of \$150;
    - (ii) Child/Dependent Care deduction as paid up to \$175 per child/dependent age 2 or over; as paid up to \$200 per child under age 2, per month.
      - (I) A deduction for payments for dependent care cannot be made when care is provided by:
        - I. The parent, stepparent, or guardian of a child;
        - II. A person who is a member of the AG of which the dependent is a member; or
        - III. The spouse of the dependent.
- (2) Earned Income Penalties. If one of the following penalty situations occur during an individual's receipt of Families First, do not allow the earned income disregards (\$150 disregard and child/dependent care):
- (a) For any individual who is not a caretaker or the parent of a dependent child, the penalty will be applied if he/she, without good cause, reduced earnings or terminated or refused employment. Good cause includes, but is not limited to unsafe or unhealthy working conditions, pay at less than the Federal minimum wage, lack of adequate child care, or lack of transportation;
  - (b) For any individual who fails, without good cause, to make a timely report of income causing an overpayment. Good cause circumstances include, but are not limited to severe illness, accident, hospitalization or natural disaster which prevents the client from reporting timely.

**Authority:** T.C.A. §§4-5-201 et seq., 71-1-105, Public Acts of 1996, Chapter 950, 45 C.F.R. 233.20, and §1115 of the Social Security Act. **Administrative History:** Original rule filed December 2, 1996; effective February 15, 1997.

**1240-1-50-.17 CALCULATING NET INCOME AND BENEFIT LEVELS.**

- (1) The Department has developed a consolidated standard (CNS) of need based on the size of the assistance group for subsistence items including the following, less any discounts for other sources of assistance:
  - (a) Safe, healthful housing;
  - (b) A low-cost adequate food budget as recommended by the USDA Thrifty Food Plan;
  - (c) An allowance for essential medical care;
  - (d) Minimum clothing for health and decency; and
  - (e) Other necessary items including, but not limited to, transportation, personal care and educational expenses.
- (2) The Families First payment does not meet 100% of need as defined by the consolidated need standard. The maximum payment per family size is set, dependent on available state and federal funds. Income available to the AG (after all appropriate disregards and deductions have been applied) is subtracted from the consolidated need standard. Payment is the lesser of the resulting deficit or the maximum payment per family size.
- (3) If an assistance group's available income equals or exceeds the CNS for the appropriate family size, the AG is not eligible for a Families First grant. If there is a deficit of one dollar (\$1.00) to nine dollars, ninety-nine cents (\$9.99), no payment can be made, but the AG is deemed to be an eligible Families First assistance group for other purposes, as long as all other points of eligibility continue to be met. If the deficit is ten dollars (\$10.00) or more and other eligibility requirements are met, payment will be made.
- (4) Payments.
  - (a) Families First payments are issued on a monthly basis and are paid for the current month.
  - (b) Initial payments are made beginning with the date of application if all other eligibility factors are met at that time, or at the first of the month in which eligibility is achieved, whichever is later.
  - (c) The amount of the payment will be:
    1. The deficit, after countable income has been subtracted from the CNS, but not less than \$10.00 per month; or
    2. A maximum payment amount for each family size, which is based on available state and federal funds.

**Authority:** T.C.A. §§4-5-201 et seq., 4-5-202, 4-5-209, 71-1-105, 71-3-152, 71-3-153, 71-3-154 and 71-3-155; 71-3-158(d)(2)(D); 42 U.S.C. §§ 601 et seq.; 42 U.S.C. § 608(a)(6); Public Acts of 1996, Chapter 950, and 45 C.F.R. 233.20, 45 C.F.R. § 233.20; Deficit Reduction Act 2005 (Pub. L. 109-171 §§ 7101 and 7102, February 8, 2006); 71 Federal Register 37454 (June 29, 2006); and Acts 2007, Chapter 31.  
**Administrative History:** Original rule filed December 2, 1996; effective February 15, 1997. Public necessity rule filed July 2, 2007; expired December 14, 2007. Amendment filed October 1, 2007; effective December 15, 2007.

**1240-1-50-.18 TREATMENT OF INCOME FROM SELF-EMPLOYMENT.**

- (1) Determining Income From Self-Employment.
  - (a) Annual Income. Income which is received annually, and/or which is an integral part of annual income will be totaled and prorated over 12 months, even if the income is received only once or over a period of time shorter than twelve months. Such income is usually derived from farming but may also apply to other self-employment enterprises. Annual income will be prorated over 12 months even if a person has income from sources other than self-employment. Income received once annually will be prorated over 12 months beginning with the month the income is received. Income which represents annual income but which is received periodically during a year will be totaled and averaged over 12 months. This average figure will be used to project future income (if all other factors remain relatively constant). If a self-employed person is under contract, the 12-month period begins the first month the person receives payment under the contract.
  - (b) Income from Migrant Labor, Seasonal Work. An estimated average monthly income from migrant labor, seasonal farm work and other seasonal employment will be considered during the months it is received.
  - (c) Monthly Self-Employment Income. When self-employment income is received monthly, the average monthly income will be estimated based on past income and substantial changes in circumstances which have occurred, such as an increase or decrease in business.
  - (d) Self-Employment as Part of Total Income. Self-employment income which is obtained only for a specific period of time will be averaged over the months it is received.
  - (e) Income From a New Business. When a self-employment enterprise has been in operation less than a year, the Families First grant will be based on current income and a change will be made at the time the AG reports income on which a more reasonable projection can be made, or when a pattern of average income is discovered.
- (2) Special Income Consideration.
  - (a) Rental Property.
    1. Income derived from rental property is considered as earned income if the individual is actively engaged in producing such income. "Actively engaged" means the individual has some responsibility in earning the income. This responsibility may include managerial activities. However, if the individual has no specific responsibility in earning the income, such as where rental properties are in the hands of rental agencies and the check is forwarded to the individual or where an individual rents farm land to others and receives a money payment, the income would not be classified as earned income. The cost of doing business is an allowable deduction regardless of whether the income is earned or unearned.
  - (b) Capital Gains. The proceeds from the sale of capital goods or equipment are calculated in the same manner as a capital gain for Federal income tax purposes. Even if only 50% of the proceeds from the sale of capital goods or equipment is taxed for Federal income tax purposes, the worker shall count the full amount of the capital gain as income.
- (3) Costs Of Producing Income From Self-Employment.

(Rule 1240-1-50-.18, continued)

- (a) When a member of the AG is self-employed, he/she shall be required to keep a record of expenses incurred in the production of this income.
  - (b) Expenses.
    - 1. Allowable costs of producing income from self-employment include, but are not limited to:
      - (i) Identifiable costs of labor (salaries, employers share of Social Security, insurance, etc.);
      - (ii) Stock, raw materials, seed and fertilizer, feed for livestock;
      - (iii) Rent and cost of building maintenance;
      - (iv) Business telephone costs;
      - (v) Costs of operating a motor vehicle when required in connection with the operation of the business;
      - (vi) Interest paid to purchase income producing property;
      - (vii) Insurance premiums and taxes paid on income producing property;
      - (viii) Costs of feed for work stock; and
      - (ix) Costs of meals and equipment for children for whom day care is provided in the self-employed person's home
    - 2. Unallowable Deductions. The following are not considered as costs of producing self-employment income and shall not be deducted from the AG's self-employment income;
      - (i) Payments on the principal of the purchase price of income producing real estate and capital assets, equipment, machinery and other durable goods;
      - (ii) Net losses from previous periods;
      - (iii) Federal, state, and local income taxes, money set aside for retirement purposes, and other work-related personal expenses (such as transportation to and from work). (These expenses are accounted for in the flat work expense deduction/disregard.);
      - (iv) Costs of producing home produce intended for family consumption;
      - (v) Family living expenses;
      - (vi) Depreciation.
- (4) Determining Monthly Income When Averaged. For the period of time over which self-employment is determined, add all gross self-employment income (including capital gains), exclude the costs of producing the self-employment income, and divide the self-employment income by the number of months over which the income will be averaged.

(Rule 1240-1-50-.18, continued)

- (5) **Determining Monthly Income When Anticipated.** For those AGs whose self-employment income is not averaged, but instead is calculated on an anticipated basis, add any capital gains the AG anticipates it will receive in the next 12 months (starting with the date the application is filed) and divide this amount by 12. Use this amount in successive months unless the anticipated amount of capital gains changes. Add the anticipated monthly amount of capital gains to the anticipated monthly self-employment income and subtract the cost of producing the income. Except for depreciation, calculate the cost of producing the self-employment income by anticipating the monthly allowable costs of producing the self-employment income.
- (6) **Assistance Groups With Boarders.**
  - (a) AGs that take in boarders or that operate commercial boarding houses are considered self-employed. Identifiable expenses are allowed as a cost of doing business as in any self-employment enterprise.

**Authority:** T.C.A. §§4-5-201 et seq., 71-1-105, Public Acts of 1996, Chapter 950, and 45 C.F.R. 233.20.  
**Administrative History:** Original rule filed December 2, 1996; effective February 15, 1997.

**1240-1-50-.19 INCOME OF RESIDENT FARM LABORERS, MIGRANT ASSISTANCE GROUPS, SCHOOL EMPLOYEES AND OTHER CONTRACTUAL EMPLOYEES.**

- (1) **Resident Farm Laborers.**
  - (a) **Stable Income - Single Employer.**
    1. Farm laborers whose primary source of income is from regular farm employment with the same employer are normally employed for the entire year and receive a regular monthly salary.
    2. The regular monthly income figure will be used to determine the amount of the Families First grant.
  - (b) **Irregular Income - Single Employer.**
    1. When an AG member is paid for work done only during the work season, but resides year round on the farm, he/she may receive advance or deferred payments (sometimes known as "furnish") during the non-work season. This irregular income shall be averaged over a 12 month period.
  - (c) **Regular or Irregular Income - Multiple Employers.** When a farm laborer works regularly for more than one employer, the total income from all employers must be counted.
- (2) **Migrant Farm Laborers.**
  - (a) **Resources.** It must be determined whether migrants have out-of-state resources or income from real property in their home area. A migrant family is permitted one home and lot as an exempt resource, as any other Families First AG. If an AG owns out-of-state real property it must be determined if it is being rented or is producing income. If it is producing income, such income must be added to all other AG income in determining need and amount of assistance.
  - (b) **Employment and Training.** Migrant workers must participate in the Families First Employment and Training program as any other applicant or recipient.

(Rule 1240-1-50-.19, continued)

- (c) Income of Children in Migrant AGs. Income of a child in a migrant AG is treated the same as that of any other child for whom Families First eligibility is being determined. If the amount of income belonging to a particular child cannot be determined, prorate equally the total income of all employed AG members and treat the child's prorata share as his/her own income.
- (3) School Employees. The average monthly income of school employees will be considered available during the months it is received.
- (4) Income Of Other Contractual Employees. The average monthly income of persons employed on a contractual basis (other than school employees) will be considered as income during the period covered by the contract.
- (5) Temporary Employment Of A Person Under Contract. Income from temporary employment will be budgeted as available only in the months received.
- (6) Unemployment Compensation. Unemployment compensation is counted as income only in the months it is received.

**Authority:** T.C.A. §§4-5-201 et seq., 71-1-105, Public Acts of 1996, Chapter 950, and 45 C.F.R. 233.20.

**Administrative History:** Original rule filed December 2, 1996; effective February 15, 1997.

**1240-1-50-.20 STANDARD OF NEED/INCOME.** ~~The following table shows the maximum income level, consolidated standard of need, and the possible standard payment amounts and differential grant payment amounts (maximum payment per assistance group size) to be used in the Families First program to determine eligibility and amount of payment.~~

- (1) Families First Cash Assistance Standards
  - (a) Consolidated Need Standard (CNS). The Department has developed a consolidated standard of need based on size of the assistance group (AG), which indicates the amount of income the assistance group would need to meet subsistence living costs according to allowances set by the state for items including food, clothing, shelter and utilities, transportation, medical care, personal incidentals, and school supplies. The CNS is used as the basis for determining the gross income standard (GIS), the standard payment amount (SPA), and the Differential Grant Payment Amount (DGPA).
  - (b) Gross Income Standard (GIS). This standard is set at One Hundred Eighty-Five Percent (185%) of the consolidated need standard. If the gross countable income of an assistance group exceeds this standard, the Assistance Group (AG) is not eligible for Families First.
  - (c) Standard Payment Amount (SPA). Tennessee does not meet One Hundred Percent (100%) of need as defined by the consolidated need standard. Rather, a maximum payment by family size, dependent on available State and Federal funds is paid, except in the instances specified in 1240-1-50-.20(e).
  - (d) Differential Grant Payment Amount (DGPA). A Families First Assistance Group which meets any one of the criteria listed below will be eligible for a grant based on the Differential Grant Payment Amount (DGPA). The DGPA is a maximum payment by family size, dependent on funds available, except in the instances specified in subparagraph (e) below. AGs that are eligible to receive the DGPA are:

(Rule 1240-1-50-.20, continued)

1. AGs with no eligible adult in the AG. This exemption does not apply if the sole reason there is no adult in the AG is due to penalty or sanction or if the adult is an ineligible alien.
2. AGs in which the caretaker is age sixty-five (65) or older.
3. AG in which the caretaker is age sixty (60) or older as of July 1, 2007.
4. AGs in which the caretaker is disabled.
5. AGs in which the caretaker must provide in-home care for a relative who lives in the home who is disabled and requires full-time care.

(e) Family Benefit Cap

1. No additional benefits will be issued due to the birth of a child when the birth occurs more than ten (10) calendar months after the later of:
  - (i) the date of application for Families First, or
  - (ii) the date of implementation of the Families First program (September 1, 1996), as provided by T.C.A. § 71-3-151, unless:
    - (I) the child was conceived as the result of verified rape or incest;
    - (II) the child is the firstborn (including all children in the case of a multiple birth) of a minor included in the Families First grant who becomes a first-time minor parent;
    - (III) the child does not reside with his/her parent;
    - (IV) the child was conceived in a month the AG was not receiving Families First; or
    - (V) the child was already born prior to the later of the date of application for Families First or the date of implementation of Families First, and the child has entered or returned to the home.
2. The additional child will be included in the need standard for the purpose of determining Families First eligibility. The income of the child, including child support, will be applied against the need standard in determining the Families First payment amount for the family. The child will be considered a Families First recipient for all other purposes.
3. The family benefit cap will not apply to a subsequent period of eligibility for families who reapply for Families First subsequent to receipt of cash assistance as long as the reason for prior case closure was other than a failure to comply with work or child support enforcement requirements or other Personal Responsibility Plan provisions, and the parent/caretaker had cooperated with the Department as defined in departmental policies for the Families First program.
  - (i) Departmental policies and rules with which the parent/caretaker must cooperate include, but are not limited to:

(Rule 1240-1-50-.20, continued)

- (I) Child support cooperation requirements, such as identifying the absent parent, meeting with child support enforcement staff, submitting a child for blood testing, and testifying in court if necessary;
  - (II) Carrying out and fulfilling Personal Responsibility Plan provisions and requirements; or
  - (III) Carrying out and fulfilling Work Plan provisions and requirements.
- (f) An assistance payment is determined as follows:
1. If the assistance group's net income (after allowable exclusions and deductions) equals or exceeds their consolidated need, the assistance group is not eligible.
  2. If the assistance group's net income is less than their consolidated need, the monthly grant amount is the smaller of a maximum payment amount by family size (SPA or DGPA, as appropriate) or the deficit if it is ten dollars (\$10) or more. If the deficit is one dollar (\$1) - nine dollars (\$9), the AG is eligible for Medicaid (TennCare) only, and is deemed to be a Families First recipient group.

In the case of an AG receiving Families First because one or both parents are unemployed, if the Principal Wage Earner (PWE) receives Unemployment Compensation (UC) the UC benefit is deducted from the grant amount determined after deducting all other countable income from the CNS, to determine the actual amount of Families First payment for the AG.

3. The minimum monthly grant which can be paid is ten dollars (\$10).

(g) Families First Need/Payment Standards

1. Tables

Table I

Number of Persons in Assistance Group	1	2	3	4	5	6	7	8	9	10
Gross Income Standard	1288	1658	1972	2240	2470	2666	2838	2991	3128	3256
Consolidated Need Standard	696	896	1066	1211	1335	1441	1534	1617	1691	1760
Maximum Payment (SPA)	95	142	185	226	264	305	345	386	425	467

Minimum Families First Payment is \$10 per month for any Assistance Group

Number of Persons in Assistance Group	11	12	13	14	15	16	17	18	19	20
Gross Income Standard	3374	3487	3596	3702	3802	3898	3987	4064	4129	4175
Consolidated Need Standard	1824	1885	1944	2001	2055	2107	2155	2197	2232	2257

(Rule 1240-1-50-.20, continued)

Maximum Payment (SPA)	508	549	589	630	670	711	750	790	831	871
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Minimum Families First Payment is \$10 per month for any Assistance Group

Table II

Number of Persons in Assistance Group	1	2	3	4	5	6	7	8	9	10
Gross Income Standard	1288	1658	1972	2240	2470	2666	2838	2991	3128	3256
Consolidated Need Standard	696	896	1066	1211	1335	1441	1534	1617	1691	1760
Maximum Payment (DGPA)	140	192	232	242	291	305	345	386	425	467

Minimum Families First Payment is \$10 per month for any Assistance Group

Number of Persons in Assistance Group	11	12	13	14	15	16	17	18	19	20
Gross Income Standard	3374	3487	3596	3702	3802	3898	3987	4064	4129	4175
Consolidated Need Standard	1824	1885	1944	2001	2055	2107	2155	2197	2232	2257
Maximum Payment (DGPA)	508	549	589	630	670	711	750	790	831	871

Minimum Families First Payment is \$10 per month for any Assistance Group

2. ~~The Families First standard payment amount (maximum payment) for an assistance group of three (3) persons represents 17.3 % of the consolidated need for an assistance group of that size. The Families First maximum differential grant payment amount for an assistance group of three (3) persons represents 21.7% of the consolidated need for an assistance group of that size. The payment for groups composed of different numbers of recipients represents an upward adjustment of the percentage in the preceding sentence which is necessary to maintain the payment at a level not more or less than that paid in fiscal year 2007-2008.~~

3. ~~Standard for Families First Transitional Services~~

~~(i) Families First assistance groups and other low income families may receive transitional services after the Families First case closes.~~

~~(ii) For purposes of this Part, "transitional services" is defined as services to assist the customer in attaining long-term self-sufficiency.~~

~~(iii) Transitional services will be provided subject to the continued availability of state and/or federal funding.~~

(Rule 1240-1-50-.20, continued)

~~(iv) In order to receive these services, the assistance group's gross monthly income must meet a standard of need.~~

~~(v) The standard of need for transitional services under this Part is defined as Two Hundred Percent (200%) of the Federal poverty level for the assistance group family size. The standard of need for this Part does not apply to Transitional Child Care or Transitional Medicaid.~~

[(g) Families First Need/Payment Standards

1. The following table shows the maximum income level and consolidated standard of need to be used in the Families First program to determine eligibility and amount of payment.

Number of Persons in Assistance Group	1	2	3	4	5	6	7	8	9	10
Gross Income Standard	1288	1658	1972	2240	2470	2666	2838	2991	3128	3256
Consolidated Need Standard	696	896	1066	1211	1335	1441	1534	1617	1691	1760

Number of Persons in Assistance Group	11	12	13	14	15	16	17	18	19	20
Gross Income Standard	3374	3487	3596	3702	3802	3898	3987	4064	4129	4175
Consolidated Need Standard	1824	1885	1944	2001	2055	2107	2155	2197	2232	2257

2. The Families First standard payment amount (maximum payment) for an assistance group of three (3) persons represents 26.0% of the consolidated need for an assistance group of that size. The Families First standard payment amount (maximum payment) for all assistance group sizes shall be determined as provided in T.C.A. § 71-3-105(f), as amended by 2018 Tenn. Laws Pub. Ch. 789 (S.B. 2247).
3. The Families First maximum differential grant payment amount for an assistance group of three (3) persons represents 30.7% of the consolidated need for an assistance group of that size.
  - (i) The Families First maximum differential grant payment amount for assistance groups of one (1) through five (5) persons shall be fifty dollars (\$50) greater than the maximum standard payment for each respective assistance group size.
  - (ii) The Families First maximum differential grant payment amount for assistance groups of six (6) or more persons shall be the same as the maximum standard payment for each respective assistance group size.
4. Work Incentive Program.

(Rule 1240-1-50-.20, continued)

- (i) Families First recipients will be eligible to receive Work Incentive Program payments when the recipient becomes financially ineligible due to an increase in earned income, provided the recipient continues to meet all other eligibility criteria.
- (ii) Incentive participants will receive the Work Incentive Program payments for no more than six (6) months with the payment amount being determined by issuing the maximum grant allotment for all eligible household members at the time the recipient became financially ineligible due to the increase in earned income.]

~~**Authority:** T.C.A. §§4-5-201 et seq., 4-5-202, 4-5-209, 71-1-105, 71-3-151 et seq., 71-3-151 through 71-3-165, 71-3-154(i), 71-3-155, 71-3-155(e)-(g), and 71-3-158(d)(2)(D); 42 U.S.C. §§ 601 et seq., 42 U.S.C. § 602, 42 U.S.C. § 607(c) and (d)(1) through (12), 42 U.S.C. § 608(a)(7) and 42 U.S.C. § 609; Senate Bill 3914/House Bill 4025 (2006), Senate Bill 2334/House Bill 2353 (2007), and Senate Bill 4213/House Bill 4219 (2008); 42 USCA §§ 601 et seq. and 42 USCA § 1315; and 45 C.F.R. 233.20, 45 C.F.R. § 261.2(b) through (m), 45 C.F.R. § 261.2(n), 45 C.F.R. § 261.10, 45 C.F.R. § 261.30, 45 C.F.R. § 261.31 and 45 C.F.R. § 261.32; Deficit Reduction Act 2005 (Pub. L. 109-171 §§ 7101 and 7102, February 8, 2006); 71 Federal Register 37454 (June 29, 2006); Acts 2007, Chapter 31; and Acts of 2008, Chapter 1203, Section 10, Item 21.~~

[**Authority:** 42 U.S.C. §§ 601 et seq., 42 U.S.C. § 1315; 45 C.F.R. § 233.20, 45 C.F.R. § 261.2(b)-(n), 45 C.F.R. § 261.10, 45 C.F.R. § 261.30--32; T.C.A. §§ 4-5-201 et seq., 71-1-105, 71-3-101 et seq., 71-3-104, 71-3-105.] **Administrative History:** Original rule filed December 2, 1996; effective February 15, 1997. Amendment filed October 10, 1997; effective December 24, 1997. Amendment to rule filed September 24, 1998; effective December 8, 1998. Amendment filed November 18, 1999; effective January 31, 2000. Amendment filed September 29, 2000; effective December 13, 2000. Amendment filed October 3, 2001; effective December 17, 2001. Amendment filed August 28, 2002; effective November 11, 2002. Amendment filed December 13, 2002; effective February 26, 2003. Amendment filed August 20, 2003; effective November 3, 2003. Repeal and new rule filed September 21, 2004; effective December 5, 2004. Public necessity rule filed July 1, 2005; effective through December 13, 2005. Repeal and new rule filed August 23, 2005; effective November 6, 2005. Public necessity rule filed July 3, 2006; effective through December 15, 2006. Amendment filed August 25, 2006; effective November 8, 2006. Public necessity rule filed July 2, 2007; expired December 14, 2007. Amendment filed August 20, 2007; effective November 3, 2007. Amendment filed October 1, 2007; effective December 15, 2007. Public necessity rule filed July 1, 2008; effective through December 13, 2008. Amendment filed September 10, 2008; effective November 24, 2008.

#### 1240-1-50-.21 REPEALED.

**Authority:** TCA §§4-5-201 et seq., 71-1-105, 42 USC §657, and PL 104-193 §302(a). **Administrative History:** Original rule filed December 2, 1996; effective February 15, 1997. Repeal filed July 5, 2002; effective September 18, 2002.

\* If a roll-call vote was necessary, the vote by the Agency on these rulemaking hearing rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Department of Human Services (board/commission/ other authority) on August 16 2018), and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: (mm/dd/yy) 6/7/18

Rulemaking Hearing(s) Conducted on: (add more dates). (mm/dd/yy) 7/30/18

Date: August 16, 2018

Signature: Cherrell Campbell-Street

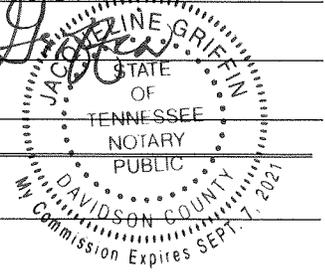
Name of Officer: Cherrell Campbell-Street

Title of Officer: Deputy, Programs and Services

Subscribed and sworn to before me on: August 16, 2018

Notary Public Signature: Jacqueline Griefen

My commission expires on: \_\_\_\_\_



Agency/Board/Commission: Department of Human Services

Rule Chapter Number(s): 1240-01-50

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Herbert H. Hartz III  
Herbert H. Hartz III  
Attorney General and Reporter

8/20/2018 Date

**Department of State Use Only**

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Filed with the Department of State on: 8/31/18

Effective on: 11/29/18

Tre Hargett

Tre Hargett  
Secretary of State

## G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Commerce and Insurance

DIVISION: Fire Prevention

SUBJECT: Codes and Standards

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 68-120-101

EFFECTIVE DATES: November 22, 2018 through June 30, 2019

FISCAL IMPACT: Minimal

STAFF RULE ABSTRACT: The rule adopts the 2018 version of the National Fire Protection Association (NFPA) 101 for classroom doors in educational occupancies, colleges and university instructional buildings. The 2018 version of NFPA 101 governing classroom doors provides more options for locking hardware on doors but does not require retrofitting of existing doors to remain code compliant. The 2012 version of NFPA 101 will continue to govern the remainder of the building(s).

## **Public Hearing Comments**

One copy of a document that satisfies T.C.A. § 4-5-222 must accompany the filing.

Mr. Andy King, Franklin Fire Department, spoke in support of the amendment to adopt the 2018 edition of the NFPA 101.

The Department thanked Mr. King for his participation in the hearing.

Mr. Shane Chandler, Tennessee Building Officials Association, spoke in support of the amendment to adopt the 2018 edition of the NFPA 101.

The Department thanked Mr. Chandler for his participation in the hearing.

Mr. James Adams, Tennessee Board of Regents, spoke in support of the amendment to adopt the 2018 edition of the NFPA 101 and had several questions about enforcement.

Director Bainbridge advised that devices deployed at the time of inspection will be addressed by inspectors. If the device is not deployed at the time of inspection, the State Fire Marshal's Office will not address how the facility stores/secures the device.

## **Regulatory Flexibility Addendum**

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process, all agencies shall conduct a review of whether a proposed rule or rule affects small business.

Pursuant to T.C.A. § 4-5-402, the regulatory flexibility analysis follows:

1. The amended rules will not overlap, duplicate or conflict with other federal, state or local governmental rules. The rules update the Life Safety Code as applied to classrooms in educational occupancies and in university instructional buildings. If a conflict does exist, the rules provide which provision governs.
2. The rules have been drafted to be clear, concise and unambiguous and to resolve existing confusion and ambiguity.
3. The rules are not anticipated to alter the standard practices of reporting and recordkeeping currently utilized by small business.
4. The rules do not establish unfriendly schedules or unreasonable deadlines for compliance and reporting requirements for small businesses.
5. The rules are not anticipated to alter the standard practices of reporting and recordkeeping currently utilized by small business.
6. The rules do not establish performance standards for small businesses.
7. These rules are not anticipated in creating any unnecessary entry barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs.

Pursuant to TCA 4-5-403, the economic impact statement follows:

1. Small businesses involved in the construction of educational occupancies and university instructional buildings will be affected by the promulgation of these rules.
2. There is no foreseeable alteration in existing reporting or recordkeeping utilized by small businesses that will result from the promulgation of these rules.
3. Small businesses involved in the construction of educational occupancies and university instructional buildings will be affected by the promulgation of these rules.
4. The amended rules are not anticipated to impact small businesses more significantly than the current rules provide. There has not been a less burdensome, intrusive or costly alternative method identified or recommended for use.
5. There are no federal or state counterparts to the rule.
6. There are no possible exemptions for small businesses to the requirements contained in these rules.

## **Impact on Local Governments**

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (<http://publications.tnsosfiles.com/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

The rule will impact local governments.

**Additional Information Required by Joint Government Operations Committee**

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

The rule adopts 2018 version of the National Fire Protection Association (NFPA) 101 for classroom doors in educational occupancies, colleges and university instructional buildings. The 2018 version of NFPA 101 governing classroom doors provides more options for locking hardware on doors but does not require retrofitting of existing doors to remain code compliant. The 2012 version of NFPA 101 will continue to govern the remainder of the building(s).

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

T.C.A. § 68-120-101 requires the State Fire Marshal to establish minimum statewide building construction standards.

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

TN Organization of School Superintendents (TOSS)  
TN Association of Independent Schools (TAIS)  
TN Board of Regents (TBR)  
The University of TN System  
TN Independent Colleges & Universities Association (TICUA)  
TN Fire Chiefs Association  
TN Sheriffs Association (TSA)  
TN Association of Chiefs of Police  
TN Building Officials Association (TBOA)

A representative from TBOA and TBR appeared at the hearing to support adoption, as did a representative of the fire service. The Department has discussed the rule with representatives all agencies listed above and has neither heard nor received any objection to the rule.

- (D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule or the necessity to promulgate the rule;

OAG 00-013 (overruled by Public Chapter 630 (2010))

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

Any impact to state or local expenditures would be voluntary; the rule does not require any changes to existing facilities but allows state and local agencies more flexibility when addressing security planning or when building new facilities. Pursuant to state law, the rule does not require retrofitting.

- (F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Christopher Bainbridge, Director of Codes Enforcement  
Mary Beth Gribble, Director of Programs and Policy  
Leigh Ferguson, Chief Counsel for Fire Prevention

- (G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Christopher Bainbridge, Director of Codes Enforcement  
Mary Beth Gribble, Director of Programs and Policy  
Leigh Ferguson, Chief Counsel for Fire Prevention

- (H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Department of Commerce and Insurance  
500 James Robertson Parkway  
Nashville, TN 37243

Christopher Bainbridge, Director of Codes Enforcement, 615-741-6246, christopher.bainbridge@tn.gov  
Mary Beth Gribble, Director of Programs and Policy, 615-532-3272, marybeth.gribble@tn.gov  
Leigh Ferguson, Chief Counsel for Fire Prevention, 615-360-4435, leigh.j.ferguson@tn.gov

- (I) Any additional information relevant to the rule proposed for continuation that the committee requests.

Department of State  
 Division of Publications  
 312 Rosa L. Parks Ave., 8th Floor, Snodgrass/TN Tower  
 Nashville, TN 37243  
 Phone: 615-741-2650  
 Email: [publications.information@tn.gov](mailto:publications.information@tn.gov)

**For Department of State Use Only**

Sequence Number: 09-25-18  
 Rule ID(s): 7229  
 File Date: 9/24/18  
 Effective Date: 11/22/18

# Rulemaking Hearing Rule(s) Filing Form

*Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing (Tenn. Code Ann. § 4-5-205).*

*Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).*

<b>Agency/Board/Commission:</b>	Department of Commerce and Insurance
<b>Division:</b>	Fire Prevention
<b>Contact Person:</b>	Leigh Ferguson
<b>Address:</b>	500 James Robertson Parkway
<b>Zip:</b>	37243
<b>Phone:</b>	615-360-4435
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**Revision Type (check all that apply):**

- Amendment  
 New  
 Repeal

**Rule(s)** (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that ALL new rule and repealed rule numbers are listed in the chart below. Please enter only ONE Rule Number/Rule Title per row)

Chapter Number	Chapter Title
0780-02-02	Codes and Standards
Rule Number	Rule Title
0780-02-02-.01	Adoption By Reference
0780-02-02-.04	Conflicts

**RULES  
OF  
TENNESSEE DEPARTMENT OF COMMERCE AND INSURANCE  
DIVISION OF FIRE PREVENTION**

**CHAPTER 0780-02-02  
CODES AND STANDARDS**

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0780-02-02-.01	Adoption by Reference	0780-02-02-.04	Conflicts
0780-02-02-.02	Repealed	0780-02-02-.05	Local Ordinances
0780-02-02-.03	Retroactive Enforcement		

**0780-02-02-.01 ADOPTION BY REFERENCE.**

- (1) Unless otherwise provided by applicable law or the provisions of this chapter, the required minimum standards for fire prevention, fire protection, and building construction safety in the State of Tennessee shall be those prescribed in the following publications:
- (a) International Building Code (IBC), 2012 edition, published by the International Code Council (ICC), except for:
    - 1. Chapter 11 Accessibility; and,
    - 2. Chapter 34, Section 3411 Accessibility For Existing Buildings;
  - (b) The International Fuel Gas Code (IFGC), 2012 edition, published by the International Code Council (ICC);
  - (c) The International Mechanical Code (IMC), 2012 edition, published by the International Code Council (ICC);
  - (d) The International Plumbing Code (IPC), 2012 edition, published by the International Code Council (ICC);
  - (e) The International Property Maintenance Code (IPMC), 2012 edition, published by the International Code Council (ICC);
  - (f) The International Fire Code (IFC), 2012 edition, published by the International Code Council (ICC);
  - (g) The International Energy Conservation Code (IECC), 2012 edition, published by the International Code Council (ICC), except that the provisions of the International Energy Conservation Code, 2006 edition, shall apply to the following occupancy classifications as defined by the International Building Code (IBC), 2012 edition:
    - 1. Moderate-hazard factory industrial, Group F-1;
    - 2. Low-hazard factory industrial, Group F-2;
    - 3. Moderate-hazard storage, Group S-1; and,
    - 4. Low-hazard storage, Group S-2;

(Rule 0780-02-02, continued)

- (h) The International Existing Building Code (IEBC), 2012 edition, published by the International Code Council (ICC);
  - (i) For state buildings, educational occupancies and any other occupancy requiring an inspection by the state fire marshal for initial licensure, NFPA 101 Life Safety Code, 2012 edition, published by the National Fire Protection Association (NFPA); except that and,
    - 1. For classrooms in existing and new educational occupancies, as defined by Tenn. Comp. R. & Regs. 0780-02-03-.01(d), 15.2.2.2.4 excluding (1): Classroom Door Locking to Prevent Unwanted Entry, NFPA 101 Life Safety Code, 2018 edition, published by the NFPA; or
    - 2. For classrooms in existing and new colleges and university instructional buildings, 39.2.2.2.2 excluding (1): Classroom Door Locking to Prevent Unwanted Entry, NFPA 101 Life Safety Code, 2018 edition, published by the NFPA.
  - (j) No provision of the preceding cited publications shall be adopted that conflicts with:
    - 1. The installation and service standards of portable fire extinguishers and fixed fire extinguisher systems in Tenn. Comp. R. & Regs. 0780-02-14-.02; and,
    - 2. The standards for engaging in the liquefied petroleum gas business in Tenn. Comp. R. & Regs. 0780-02-17-.02.
- (2) Paragraph (1) of this rule shall not be construed as adopting any provision of the cited publications which establishes:
- (a) an optional or recommended, rather than mandatory, standard or practice; or,
  - (b) any agency, procedure, fees or penalties for administration or enforcement purposes inconsistent with the statute or rules.

**Authority:** ~~T.C.A. §§ 68-102-113, and 68-120-101, 68-120-101(a) and (e), 68-102-113, and 68-102-113(a) and (e).~~ **Administrative History:** Original rule certified June 10, 1974. Repeal and new rule filed August 17, 1976; effective September 16, 1976. Repeal and new rule filed July 27, 1982; effective August 26, 1982. Amendment filed October 11, 1985; effective November 10, 1985. Amendment filed July 9, 1990; effective August 23, 1990. Amendment filed March 13, 1996; effective May 27, 1996. Amendment filed October 14, 1997; effective December 28, 1997. Amendment filed June 12, 2001; effective August 26, 2001. Amendment filed March 19, 2004; effective June 2, 2004. Amendment filed November 16, 2007; withdrawn December 28, 2007. Emergency rule filed January 25, 2008; effective through July 8, 2008. Emergency rule filed July 8, 2008; effective through December 20, 2008. Amendment filed June 18, 2008; effective September 1, 2008. Amendments filed October 2, 2008; effective December 16, 2008. Amendments filed March 29, 2010; effective June 27, 2010. Repeal and amendments filed May 6, 2016; effective August 4, 2016.

#### **0780-02-02-.02 REPEALED.**

**Authority:** T.C.A. §§ 53-2413, 68-102-113, and 68-120-101, and Chapter 857, Public Acts of 1982. **Administrative History:** Original rule filed July 27, 1982; effective August 26, 1982. Repeal and amendments filed May 6, 2016; effective August 4, 2016.

**0780-02-02-.03 RETROACTIVE ENFORCEMENT.** Any existing building which conformed to the standards legally effective at the time of its construction shall not be subject to the standards adopted by reference in Tenn. Comp. R. & Regs. 0780-02-02-.01, unless the nonconformity of the building to such standards poses a serious life safety hazard. However, any construction as defined in Tenn. Comp. R. & Regs. 0780-02-03-.01 undertaken after the effective date of this chapter shall be in compliance with the

(Rule 0780-02-02, continued)

standards adopted by reference in Tenn. Comp. R. & Regs. 0780-02-02-.01.

**Authority:** T.C.A. §§ 53-2413, 68-102-113, 68-120-101, 68-120-102, and Chapter 857, Public Acts of 1982. **Administrative History:** Original rule filed July 27, 1982; effective August 26, 1982. Amendment filed June 12, 2001; effective August 26, 2001. Repeal and amendments filed May 6, 2016; effective August 4, 2016.

#### 0780-02-02-.04 CONFLICTS.

- (1) In the event of a conflict or inconsistency between the codes adopted by reference in Tenn. Comp. R. & Regs. 0780-02-02-.01:
  - (a) the provisions of the International Building Code (IBC) shall prevail if such conflict or inconsistency relates to building height, building area restrictions or construction type;
  - (b) the provisions of the Tennessee Public Building Accessibility Act, T.C.A. § 68-120-201, et seq., shall prevail if such conflict or inconsistency relates to accessibility; and,
  - (c) the provisions of NFPA 101 Life Safety Code, 2018 edition, shall prevail if such conflict or inconsistency relates to classrooms in existing and new educational occupancies, colleges, and university instructional buildings; and
  - (ed) the more stringent provision shall prevail in all other cases.
- (2) In the event of a conflict or inconsistency between either standard adopted by reference in Tenn. Comp. R. & Regs. 0780-02-02-.01 and 0780-02-01 (Electrical Installations), the provisions of Tenn. Comp. R. & Regs. 0780-02-01 (Electrical Installations) shall prevail.
- (3) Nothing in this rule shall abrogate any right of appeal granted under T.C.A., Title 68, Chapters 102 and 120.

**Authority:** T.C.A. §§ 68-102-113, ~~68-102-113(a) and (e)~~, 68-120-101, ~~68-120-101(a)~~, and 68-120-106. **Administrative History:** Original rule filed July 27, 1982; effective August 26, 1982. Amendment filed November 14, 1983; effective December 14, 1983. Amendment filed July 9, 1990; effective August 23, 1990. Amendment filed October 14, 1997, effective December 28, 1997. Amendment filed March 19, 2004; effective June 2, 2004. Amendment filed November 16, 2007; withdrawn December 28, 2007. Amendment filed June 18, 2008; effective September 1, 2008. Amendment filed October 2, 2008; effective December 16, 2008. Repeal and amendments filed May 6, 2016; effective August 4, 2016.

**0780-02-02-.05 LOCAL ORDINANCES.** Except as provided in T.C.A. § 68-120-101, or otherwise approved in writing by the state fire marshal, no city, county, town, municipal corporation, metropolitan government, or political subdivision of the state of Tennessee shall adopt or enforce any ordinance prescribing less stringent standards of fire prevention, fire protection, or building construction safety than those established hereunder. A city, county, town, municipal corporation, metropolitan government, or political subdivision of the state of Tennessee that has adopted an edition of a building construction or fire safety standard within seven (7) years of the most current published edition shall be deemed to be in compliance with this chapter.

**Authority:** T.C.A. §§ 58-2413, 68-17-113, 68-18-101, 68-102-113, 68-120-101, 68-120-106, and Chapter 857, Public Acts of 1982. **Administrative History:** Original rule filed July 17, 1982; effective August 26, 1982. Amendment filed October 11, 1985; effective November 10, 1985. Repeal and amendments filed May 6, 2016; effective August 4, 2016.

\* If a roll-call vote was necessary, the vote by the Agency on these rulemaking hearing rules was as follows:

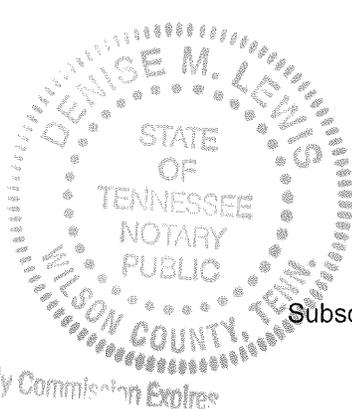
Board Member	Aye	No	Abstain	Absent	Signature (if required)

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Commissioner (board/commission/ other authority) on 8/14/18 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: June 1, 2018

Rulemaking Hearing(s) Conducted on: (add more dates). July 25, 2018



Date: 8/14/18

Signature: Julie Mix McPeak

Name of Officer: Julie Mix McPeak

Title of Officer: Commissioner, Department of Commerce and Insurance

Subscribed and sworn to before me on: 8/14/18

Notary Public Signature: Denise M Lewis

My commission expires on: 1/15/20

Agency/Board/Commission: Department of Commerce and Insurance

Rule Chapter Number(s): 0780-02-02

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Herbert H. Slattery III  
Herbert H. Slattery III  
Attorney General and Reporter

8/22/2018  
[Signature] Date

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Filed with the Department of State on: 8/24/18

Effective on: 11/22/18

[Signature]  
Tre Hargett  
Secretary of State

## G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Commerce and Insurance

DIVISION: Insurance

SUBJECT: Corporate Governance Annual Disclosure

STATUTORY AUTHORITY: Acts 2018, Public Chapter 873, § 8

EFFECTIVE DATES: November 18, 2018 through June 30, 2019

FISCAL IMPACT: None

STAFF RULE ABSTRACT: These rules establish the Corporate Governance Annual Disclosure (CGAD) filing procedures and identify the information insurance companies must file with the Department of Commerce and Insurance. Previously, the corporate governance of an insurer was only reviewed during an examination of an insurer once every five years. The CGAD is designed to give insurance examiners a clearer picture of an insurance corporate governance structure and a better understanding of any changes to a company's corporate governance that may occur between examination cycles. While this is a new regulatory filing requirement, the CGAD is designed to minimize the cost of compliance by allowing companies to reference information available in filings already filed with the Department or any other state or federal agency.

NOTE: The redline copy of the rule provided in this packet contains no strikethroughs or underlining as the rule is a new rule.

## **Public Hearing Comments**

One comment was received from Benjamin Sanders, Executive Director of Government Affairs at Farm Bureau Insurance – Tennessee. Mr. Sanders praised the Department's efforts in working to ensure that these rules' disclosure requirements were fair and appropriate for all insurers of all sizes.

**RESPONSE:** The Department thanks all industry stakeholders and interested parties for their input on developing these rules.

## **Regulatory Flexibility Addendum**

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process, all agencies shall conduct a review of whether a proposed rule or rules affects small business.

These rules apply only to insurance companies licensed by the Tennessee Department of Commerce & Insurance. Some insurance companies, especially those licensed as county mutual insurance companies, see Tenn. Code Ann. §§ 56-22-101 through 56-22-120, are small businesses.

The CGAD filing requirements are designed to minimize the burden of additional regulatory reporting. To that end, items required in the CGAD report may be reported by referencing other filings made to the Department or other regulatory bodies without having to reproduce the same information. In this manner, where CGAD filing requirements do overlap or duplicate the reporting requirements of other state or federal government agencies, the company can merely cite to those previous filings.

The purpose of this rule is to give the Department a better understanding of the corporate governance makeup of a company and any significant changes from year to year. The CGAD filing requirements were designed to give insurance companies maximum flexibility in formatting their report.

These rules adopt the National Association of Insurance Commissioners (NAIC) Corporate Governance Annual Disclosure Model Regulation, and their adoption is required to maintain NAIC accreditation. These rules differ from the model regulation to further lessen the reporting burden on small and nonprofit insurers who only write insurance policies in Tennessee. The difference between these rules and the model regulation are that these rules reduce the regulatory burden on small businesses and nonprofits by simplifying their reporting requirements. The General Assembly directed the Department to make this distinction when it adopted 2018 Tenn. Public Acts Ch. 873, § 8 (subsection 56-2-906(c)).

Large multistate insurers are structured and run differently than community-based local insurers. These rules recognize that distinction and allow small insurers to complete the CGAD filing more easily while maintaining adherence to NAIC accreditation standards.

## **Impact on Local Governments**

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (<http://publications.tnsosfiles.com/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

This rule will not have an impact on local governments.

**Additional Information Required by Joint Government Operations Committee**

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

These rules establish the Corporate Governance Annual Disclosure (CGAD) filing procedures and identify the information insurance companies must file with the Department of Commerce and Insurance. Previously, the corporate governance of an insurer was only reviewed during an examination of an insurer once every five years. The CGAD is designed to give insurance examiners a clearer picture of an insurance corporate governance structure and a better understanding of any changes to a company's corporate governance that may occur between examination cycles. While this is a new regulatory filing requirement, the CGAD is designed to minimize the cost of compliance by allowing companies to reference information available in filings already filed with the Department or any other state or federal agency.

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

These rules are required pursuant to the enactment of 2018 Tenn. Public Acts Ch. 873, § 8, the Corporate Governance Annual Disclosure Act. Promulgation of these rules is necessary for the Department to maintain its accreditation by the National Association of Insurance Commissioners (NAIC).

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

This rulemaking will impact all insurance companies in Tennessee. Non-resident insurance companies will have to make a similar CGAD filing in their home state. The Department has not been advised of any affected insurer that urges rejection of this rule. Tennessee insurance companies are likely to urge adoption of this rule as its promulgation is necessary for the Department to maintain its NAIC accreditation. By maintaining our accreditation, Tennessee insurance companies are able to more effectively and efficiently operate in other states.

- (D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule or the necessity to promulgate the rule;

None known.

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

None.

- (F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Michael Humphreys, Assistant Commissioner for Insurance; Rachel Jrade-Rice, Director of Insurance; Benjamin Whitehouse, Supervising Attorney & Assistant General Counsel for Insurance.

- (G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Benjamin Whitehouse, Supervising Attorney & Assistant General Counsel for Insurance.

- (H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Davy Crockett Tower, 8th Floor, 500 James Robertson Parkway, Nashville, Tennessee 37243; 615-741-2616;  
ben.whitehouse@tn.gov

(I) Any additional information relevant to the rule proposed for continuation that the committee requests.

None.

**Department of State  
Division of Publications**

312 Rosa L. Parks Ave., 8th Floor, Snodgrass/TN Tower  
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Sequence Number: 08-17-18  
Rule ID(s): 7227  
File Date: 8/20/18  
Effective Date: 11/18/18

# Rulemaking Hearing Rule(s) Filing Form

*Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing (Tenn. Code Ann. § 4-5-205).*

*Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).*

<b>Agency/Board/Commission:</b>	Department of Commerce and Insurance
<b>Division:</b>	Insurance
<b>Contact Person:</b>	Benjamin Whitehouse, Supervising Attorney & Assistant General Counsel for Insurance
<b>Address:</b>	Davy Crockett Tower, 8 <sup>th</sup> Floor 500 James Robertson Parkway Nashville, Tennessee
<b>Zip:</b>	37243
<b>Phone:</b>	615-741-2616
<b>Email:</b>	ben.whitehouse@tn.gov

**Revision Type (check all that apply):**

- Amendment  
 New  
 Repeal

**Rule(s)** (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that ALL new rule and repealed rule numbers are listed in the chart below. Please enter only ONE Rule Number/Rule Title per row)

Chapter Number	Chapter Title
0780-01-35	Corporate Governance Annual Disclosure
Rule Number	Rule Title
0780-01-35-.01	Authority.
0780-01-35-.02	Purpose.
0780-01-35-.03	Definitions.
0780-01-35-.04	Filing Procedures.
0780-01-35-.05	Contents of Corporate Governance Annual Disclosure.
0780-01-35-.06	Contents of Corporate Governance Annual Disclosure for Nonprofit and Qualified Insurers.
0780-01-35-.07	Severability.

Chapter 0780-01-35, Corporate Governance Annual Disclosure, is adopted as follows:

Chapter 0780-01-35  
Corporate Governance Annual Disclosure

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0780-01-35-.02 Purpose  
0780-01-35-.03 Definitions  
0780-01-35-.04 Filing Procedures  
0780-01-35-.05 Contents of Corporate Governance Annual Disclosure  
0780-01-35-.06 Contents of Corporate Governance Annual Disclosure for Nonprofit and Qualified Insurers.  
0780-01-35-.07 Severability

0780-01-35-.01 Authority.

This chapter is promulgated pursuant to the authority granted by T.C.A. § 56-2-301 and 2018 Tenn. Pub. Acts Ch. 873, § 8.

Authority: T.C.A. § 56-2-301 and 2018 Tenn. Pub. Acts Ch. 873, § 8.

0780-01-35-.02 Purpose.

The purpose of this chapter is to set forth the procedures for filing and the required contents of the Corporate Governance Annual Disclosure (CGAD), deemed necessary by the Commissioner to carry out the provisions of the Corporate Governance Annual Disclosure Act, 2018 Tenn. Pub. Acts Ch. 873, § 8

Authority: T.C.A. § 56-2-301 and 2018 Tenn. Pub. Acts Ch. 873, § 8.

0780-01-35-.03 Definitions.

- (1) "Commissioner" means the Commissioner of the Tennessee Department of Commerce & Insurance.
- (2) "Insurance group" means those insurers and affiliates included within an insurance holding company system as defined in T.C.A. Title 56, chapter 11, part 1.
- (3) "Insurer" shall have the same meaning as "insurance company" as set forth in § 56-1-102, except that it shall not include agencies, authorities, or instrumentalities of the United States, its possessions and territories, the Commonwealth of Puerto Rico, the District of Columbia, or a state or political subdivision of a state.
- (4) "Senior Management" shall mean any corporate officer responsible for reporting information to the board of directors at regular intervals or providing this information to shareholders or regulators and shall include, for example and without limitation, the Chief Executive Officer ("CEO"), Chief Financial Officer ("CFO"), Chief Operations Officer ("COO"), Chief Procurement Officer ("CPO"), Chief Legal Officer ("CLO"), Chief Information Officer ("CIO"), Chief Technology Officer ("CTO"), Chief Revenue Officer ("CRO"), Chief Visionary Officer ("CVO"), or any other "C" level executive.

Authority: T.C.A. § 56-2-301 and 2018 Tenn. Pub. Acts Ch. 873, § 8.

0780-01-35-.04 Filing Procedures.

- (1) An insurer, or the insurance group of which the insurer is a member, required to file a CGAD by the Corporate Governance Annual Disclosure Act, 2018 Tenn. Pub. Acts Ch. 873, § 8, shall submit to the Commissioner a CGAD in accordance with the following:

- (a) All insurers or insurance groups, except those that fall within the scope of subparagraph (b), shall file a CGAD that contains the information described in Rule 0780-01-35-.05.
  - (b) An insurer or insurer group who meets the requirements of 2018 Tenn. Pub. Acts Ch. 873, § 8 (subsection 56-2-906(c)), shall file a CGAD that contains the information described in Rule 0780-01-35-.06. For the purposes of this Rule, "nominal compensation" is defined as where 75% of the voting directors on the insurer or insurance group's Board receive direct compensation of \$10,000 or less per year and indirect compensation and benefits of \$50,000 or less per year, exclusive of per diem and lodging travel expenses.
- (2) The CGAD must include a signature of the insurer's or insurance group's CEO or corporate secretary attesting to the best of the individual's belief and knowledge that the insurer or insurance group has implemented the corporate governance practices and that a copy of the CGAD has been provided to the insurer's or insurance group's Board of Directors (hereinafter "Board") or the appropriate committee thereof.
  - (3) The insurer or insurance group shall have discretion regarding the appropriate format for providing the information required by these regulations and is permitted to customize the CGAD to provide the most relevant information necessary to permit the Commissioner to gain an understanding of the corporate governance structure, policies and practices utilized by the insurer or insurance group.
  - (4) For the purposes of completing the CGAD, the insurer or insurance group may choose to provide information on governance activities that occur at the ultimate controlling parent level, an intermediate holding company level and/or the individual legal entity level, depending upon how the insurer or insurance group has structured its system of corporate governance. The insurer or insurance group is encouraged to make the CGAD disclosures:
    - (a) at the level at which the insurer's or insurance group's risk appetite is determined;
    - (b) at which the earnings, capital, liquidity, operations, and reputation of the insurer are overseen collectively and at which the supervision of those factors are coordinated and exercised; or
    - (c) at the level at which legal liability for the failure of general corporate governance duties would be placed.

If the insurer or insurance group determines the level of reporting based on these criteria, it shall indicate which of the three criteria was used to determine the level of reporting and explain any subsequent changes in the level of reporting.

- (5) Notwithstanding paragraph (1) of this rule, and as outlined in 2018 Tenn. Pub. Acts Ch. 873, § 8 (subsection 56-2-904), if the CGAD is completed at the insurance group level, then it must be filed with the lead state of the group as determined by the procedures outlined in the most recent Financial Analysis Handbook adopted by the NAIC. In these instances, a copy of the CGAD must also be provided to the chief regulatory official of any state in which the insurance group has a domestic insurer, upon request.
- (6) An insurer or insurance group may comply with this chapter by referencing other existing documents (e.g., ORSA summary Report, Holding Company Form B or F Filings, Securities and Exchange Commission (SEC) Proxy Statements, foreign regulatory reporting requirements, etc.) if the documents provide information that is comparable to the information described in Rule 0780-01-35-.05 or Rule 0780-01-35-.06, as applicable. The insurer or insurance group shall clearly reference the location of the relevant information within the CGAD and attach the referenced document if it is not already filed with or available to the Commissioner.
- (7) Each year following the initial filing of the CGAD, the insurer or insurance group shall file an amended version of the previously filed CGAD indicating where changes have been made. If no changes were made in the information or activities reported by the insurer or insurance group, the filing should so state.

0780-01-35-.05 Contents of Corporate Governance Annual Disclosure

- (1) The insurer or insurance group shall be as descriptive as possible in completing the CGAD, with inclusion of attachments or example documents that are used in the governance process, since these may provide a means to demonstrate the strengths of their governance framework and practices.
- (2) The CGAD shall describe the insurer's or insurance group's corporate governance framework and structure including consideration of the following:
  - (a) The Board and various committees thereof ultimately responsible for overseeing the insurer or insurance group and the level(s) at which that oversight occurs (e.g., the ultimate control level, intermediate holding company, legal entity, etc.). The insurer or insurance group shall describe and discuss the rationale for the current Board size and structure; and
  - (b) The duties of the Board and each of its significant committees and how they are governed (e.g. bylaws, charters, informal mandates, etc.), as well as how the Board's leadership is structured, including a discussion of the roles of CEO and Chairman of the Board within the organization.
- (3) The insurer or insurance group shall describe the policies and practices of the most senior governing entity and significant committees thereof, including a discussion of the following factors:
  - (a) How the qualifications, expertise and experience of each Board member meet the needs of the insurer or insurance group.
  - (b) How an appropriate amount of independence is maintained on the Board and its significant committees.
  - (c) The number of meetings held by the Board and its significant committees over the past year as well as information on director attendance.
  - (d) How the insurer or insurance group identifies, nominates and elects members to the Board and its committees. The discussion should include, for example:
    1. Whether a nomination committee is in place to identify and select individuals for consideration;
    2. Whether term limits are placed on directors;
    3. How the election and re-election processes function; and
    4. Whether a Board diversity policy is in place and, if so, how it functions.
  - (e) The processes in place for the Board to evaluate its performance and the performance of its committees, as well as any recent measures taken to improve performance (including any Board or committee training programs that have been put in place).
- (4) The insurer or insurance group shall describe the policies and practices for directing Senior Management, including a description of the following factors:
  - (a) Any processes or practices (i.e., suitability standards) to determine whether officers and key persons in control functions have the appropriate background, experience and integrity to fulfill their prospective roles, including:

1. Identification of the specific positions for which suitability standards have been developed and a description of the standards employed; and
  2. Any changes in an officer's or key person's suitability as outlined by the insurer's or insurance group's standards and procedures to monitor and evaluate such changes.
- (b) The insurer's or insurance group's code of business conduct and ethics, the discussion of which considers, for example:
1. Compliance with laws, rules, and regulations; and
  2. Proactive reporting of any illegal or unethical behavior.
- (c) The insurer's or insurance group's processes for performance evaluation, compensation and corrective action to ensure effective Senior Management throughout the organization, including a description of the general objectives of significant compensation programs and what the programs are designed to reward. The description shall include sufficient detail to allow the Commissioner to understand how the organization ensures that compensation programs do not encourage and/or reward excessive risk taking. Elements to be discussed may include, for example:
1. The Board's role in overseeing management compensation programs and practices;
  2. The various elements of compensation awarded in the insurer's or insurance group's compensation programs and how the insurer or insurance group determines and calculates the amount of each element of compensation paid;
  3. How compensation programs are related to both company and individual performance over time;
  4. Whether compensation programs include risk adjustments and how those adjustments are incorporated into the programs for employees at different levels;
  5. Any clawback provisions built into the programs to recover awards or payments if the performance measures upon which they are based are restated or otherwise adjusted; and
  6. Any other factors relevant in understanding how the insurer or insurance group monitors its compensation policies to determine whether its risk management objectives are met by incentivizing its employees.
- (d) The insurer's or insurance group's plans for CEO and Senior Management succession.
- (5) The insurer or insurance group shall describe the processes by which the Board, its committees and Senior Management ensure an appropriate amount of oversight to the critical risk areas impacting the insurer's business activities, including a discussion of:
- (a) How oversight and management responsibilities are delegated between the Board, its committees and Senior Management;
  - (b) How the Board is kept informed of the insurer's strategic plans, the associated risks, and steps that Senior Management is taking to monitor and manage those risks; and
  - (c) How reporting responsibilities are organized for each critical risk area. The description should allow the Commissioner to understand the frequency at which information on each critical risk area is reported to and reviewed by Senior Management and the Board. This description may include, for example, the following critical risk areas of the insurer:

1. Risk management processes (An ORSA Summary Report filer may refer to its ORSA Summary Report filed pursuant to T.C.A. Title 56, Chapter 11, Part 2);
2. Actuarial function;
3. Investment decision-making processes;
4. Reinsurance decision-making processes;
5. Business strategy/finance decision-making processes;
6. Compliance function;
7. Financial reporting/internal auditing; and
8. Market conduct decision-making processes.

Authority: T.C.A. § 56-2-301 and 2018 Tenn. Pub. Acts Ch. 873, § 8.

0780-01-35-.06 Contents of Corporate Governance Annual Disclosure for Certain Nonprofit and Qualified Insurers

- (1) The CGAD should describe the insurer or insurance group's corporate governance framework and structure and include an overview and description of the Board and various committees thereof ultimately responsible for overseeing the insurer or insurance group and the level(s) at which that oversight occur and the role of the chairman of the Board within the organization. The CGAD description of the Board should include biographical information for each Board member.
- (2) The CGAD should include a narrative and description of the policies and practices of the Board, including discussion of the duties of any advisors utilized by the Board, and a description of the processes in place for the Board to evaluate its performance and the performance of its committees.
- (3) The CGAD should include a description of the interaction between the Board and senior management, which include:
  - (a) A description of the role of the CEO and other senior management that makes periodic reports to the Board;
  - (b) A description of how the Board reviews significant financial management decisions by senior management; and
  - (c) A description of how the Board provides periodic feedback and instruction to senior management.
- (4) The CGAD should include a description of the processes by which the Board ensures an appropriate amount of oversight to critical risk areas impacting the insurer's business activities, including a discussion of:
  - (a) Risk management processes;
  - (b) Actuarial information;
  - (c) Investment decision-making processes;
  - (d) Reinsurance decision-making processes;
  - (e) Business strategy;
  - (f) Compliance function;

- (g) Financial reporting/internal auditing; and
- (h) Market conduct decision-making processes.

0780-01-35-.07 Severability.

If any provision of this chapter, or the application thereof to any person or circumstance, is held invalid, such determination shall not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to that end the provisions of this chapter are severable.

Authority: T.C.A. § 56-2-301 and 2018 Tenn. Pub. Acts Ch. 873, § 8.

\* If a roll-call vote was necessary, the vote by the Agency on these rulemaking hearing rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
N/A					

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Commissioner (board/commission/ other authority) on 07/31/2018 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 5/4/2018

Rulemaking Hearing(s) Conducted on: (add more dates). 7/10/2018



Date: 7/31/18

Signature: Julie Mix McPeak

Name of Officer: Julie Mix McPeak

Title of Officer: Commissioner

Subscribed and sworn to before me on: 7/31/18

Notary Public Signature: Denise M. Lewis

My commission expires on: 1/15/20

Agency/Board/Commission: Tennessee Department of Commerce and Insurance

Rule Chapter Number(s): 0780-01-35

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Herbert H. Slatery III  
Herbert H. Slatery III  
Attorney General and Reporter  
8/17/2018 Date

RECEIVED  
2018 AUG 20 PM 1:26  
SECRETARY OF STATE  
JULIE B. HARGETT

**Department of State Use Only**

Filed with the Department of State on: 8/20/18

Effective on: 11/18/18

Tre Hargett  
Tre Hargett  
Secretary of State

## G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Board of Architectural and Engineering Examiners

DIVISION: Regulatory Boards, Department of Commerce and Insurance

SUBJECT: Registration Requirements and Procedures

STATUTORY AUTHORITY: There is no known state or federal law mandating the promulgation of these rules.

EFFECTIVE DATES: November 7, 2018 through June 30, 2019

FISCAL IMPACT: None

STAFF RULE ABSTRACT: These proposed rules include the following:

The amendment to Rule 0120-01-.03 allows a person gaining practical experience in an office of a practicing architect to use the title "architectural associate". Previously, an unlicensed person of this experience level was referred to as an "intern architect" throughout the industry. Most states are moving towards this change in title.

The amendment to rule 0120-01-.10 expands the means of obtaining "progressive experience in the practice of engineering". The amendment would allow an engineer applicant to gain one (1) year of credit for three (3) years or more qualified experience obtained under the direct supervision of a licensed engineer. The current rule only allows for credit for a Master's degree or participation in an established cooperative education program. This amendment allows the Board more flexibility in awarding credit for "progressive experience in the practice of engineering" for obtaining engineering licensure in Tennessee.

## Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process, all agencies shall conduct a review of whether a proposed rule or rule affects small business.

1) The type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, or directly benefit from the proposed rule.

The amendment to Rule 0120-01-.03 would affect small businesses which employ any person gaining practical experience in the office of a practicing architect. This rule would directly benefit those small businesses by allowing the persons gaining practical experience to refer to themselves as "architectural associates." This title is projected to decrease confusion among the public. The amendment to rule 0120-01-.10 would affect engineer applicants who are gaining qualified experience under the direct supervision of a licensed engineer. This amendment will benefit non-traditional students upon application for licensure as a registered engineer. There are many licensed engineers who own small businesses. This rule amendment would benefit engineer applicants by allowing them to gain progressive experience credit from working under the direct supervision of a licensed engineer for three (3) years. Currently, in Tennessee, there are around 1,800 registered Architecture firms, around 4,100 registered Engineering firms, and around 200 registered Landscape Architecture Firms; the majority of these would be considered a small business in Tennessee and thus would benefit from these rule amendments.

(2) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record.

There is no projected reporting, recordkeeping, or other administrative cost associated with the amendments to Rule 0120-01-.03 and Rule 0120-01-.10

(3) A statement of the probable effect on impacted small businesses and consumers.

The probable effect on impacted small businesses and consumers for the amendment to Rule 0120-01-.03 would be less confusion regarding the knowledge and skills of those working toward registration as a licensed architect. Persons gaining practical experience under a registered architect may obtain more jobs with the title "architectural associate" than with the previous title "intern architect" as much of the public does not understand the education and skills required to obtain this previous designation.

The probable effect on impacted small businesses and consumers for the amendment to Rule 0120-01-.10 would be that more applicants will receive credit for "progressive experience in the practice of engineering" and thus, more applicants will eventually enter the job market as licensed engineers, many of which will work for small businesses.

(4) A description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and objectives of the proposed rule that may exist, and to what extent the alternative means might be less burdensome to small business.

The Board believes that these changes are not burdensome, intrusive or costly and – as such – there do not appear to be any alternatives that would reasonably be expected to be less burdensome.

(5) A comparison of the proposed rule with any federal or state counterparts.

These rules do not have any federal or state counterparts.

(6) Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule.

Exemption from these rules would not be expected to be beneficial for small businesses, as uniformity among the profession is important to maintain consistency and quality of the work performed by licensed engineers, architects, and landscape architects. All expected effects would be positive for small businesses.

### **Impact on Local Governments**

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (<http://publications.tnsosfiles.com/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

The rule changes are not expected to impact local governments.

## Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

The amendments to Rule 0120-01-.03 allow a person gaining practical experience in an office of a practicing architect to use the title "architectural associate." Previously, an unlicensed person of this experience level was referred to as an "intern architect" throughout the industry. Most states are moving towards this change in title.

The amendment to Rule 0120-01-.10 expands the means of obtaining "progressive experience in the practice of engineering." The amendment would allow an engineer applicant to gain one (1) year of credit for three (3) years or more qualified experience obtained under the direct supervision of a licensed engineer. The current rule only allows for credit for a Master's degree or participation in an established cooperative education program. This amendment allows the Board more flexibility in awarding credit for "progressive experience in the practice of engineering" for obtaining engineering licensure in Tennessee.

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

There is no known state nor federal law mandating the promulgation of these rules.

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

Amendments to Rule 0120-01-.03 will directly affect those persons gaining practical experience in an office of a practicing architect, persons previously referred to as "intern architects." These persons have stated opinions at previous Board meetings that they would urge adoption of this rule. Members of the National Council of Architectural Registration Boards (NCARB) have also expressed opinions urging the Board to adopt this amendment.

Amendments to Rule 0120-01-.10 will directly affect applicants for engineer licensure in Tennessee. The Board has heard several public opinions from potential licensees expressing opinions which would urge the Board to adopt this amendment. The Board urges adoption of these rules.

- (D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule or the necessity to promulgate the rule;

There are no known opinions of the Attorney General and Reporter or any judicial ruling that directly relates to these rules.

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

This rule is not estimated to have a probable increase or decrease in state and local government revenue and expenditures.

- (F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Roxana Gumucio, Interim Executive Director  
500 James Robertson Parkway

Davy Crockett Tower, 5<sup>th</sup> Floor  
Nashville, TN 37243  
(615) 532-7081  
Roxana.Gumucio@tn.gov

Elizabeth Goldstein, Assistant General Counsel  
500 James Robertson Parkway  
Davy Crockett Tower, 5<sup>th</sup> Floor  
Nashville, TN 37243  
(615) 741-3072  
Elizabeth.Goldstein@tn.gov

- (G)** Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Roxana Gumucio, Interim Executive Director  
Elizabeth Goldstein, Assistant General Counsel

- (H)** Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Roxana Gumucio, Interim Executive Director  
500 James Robertson Parkway  
Davy Crockett Tower, 5<sup>th</sup> Floor  
Nashville, TN 37243  
(615) 532-7081  
Roxana.Gumucio@tn.gov

Elizabeth Goldstein, Assistant General Counsel  
500 James Robertson Parkway  
Davy Crockett Tower, 5<sup>th</sup> Floor  
Nashville, TN 37243  
(615) 741-3072  
Elizabeth.Goldstein@tn.gov

- (I)** Any additional information relevant to the rule proposed for continuation that the committee requests.

There is no known additional relevant information.

**Department of State  
Division of Publications**

312 Rosa L. Parks Ave., 8th Floor, Snodgrass/TN Tower  
Nashville, TN 37243  
Phone: 615-741-2650  
Email: [publications.information@tn.gov](mailto:publications.information@tn.gov)

**For Department of State Use Only**

Sequence Number: 08-09-18  
Rule ID(s): 7224  
File Date: 9/9/18  
Effective Date: 11/7/18

## Proposed Rule(s) FILING FORM

*Proposed rules are submitted pursuant to Tenn. Code Ann. §§ 4-5-202, 4-5-207, and 4-5-229 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within ninety (90) days of the filing of the proposed rule with the Secretary of State. To be effective, the petition must be filed with the Agency and be signed by ten (10) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of ten (10) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.*

*Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).*

<b>Agency/Board/Commission:</b>	Tennessee Board of Architectural and Engineering Examiners
<b>Division:</b>	Division of Regulatory Boards, Department of Commerce and Insurance
<b>Contact Person:</b>	Elizabeth Goldstein
<b>Address:</b>	500 James Robertson Parkway
<b>Zip:</b>	37243
<b>Phone:</b>	(615) 532-6304
<b>Email:</b>	<a href="mailto:elizabeth.goldstein@tn.gov">elizabeth.goldstein@tn.gov</a>

**Revision Type (check all that apply):**

- Amendment  
 New  
 Repeal

**Rule(s)** (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that **ALL** new rule and repealed rule numbers are listed in the chart below. Please enter only **ONE** Rule Number/Rule Title per row)

Chapter Number	Chapter Title
0120-01	Registration Requirements and Procedures
Rule Number	Rule Title
0120-01-.03	Individuals Registered in Other Jurisdictions
0120-01-.10	Education and Experience Requirements-Engineer

Rules of Tennessee Board of Architectural and Engineering Examiners  
Chapter 0120-01  
Registration Requirements and Procedures

Rule 0120-01-.03 Individuals Registered in Other Jurisdictions is amended by adding additional language and lettering the subparagraphs so that as amended the rule shall read:

- (1)
  - (a) Unless properly registered, individuals shall not make use of the title "engineer," "architect," "landscape architect," or any appellation thereof that gives the impression that the individual is an architect, engineer, or landscape architect in Tennessee. Individuals not registered in Tennessee but registered in other jurisdictions may use these titles so long as the jurisdiction in which they are registered is clearly specified so as not to mislead the public regarding their credentials. This clarification is not required on communications from an out-of-state office, provided that the individual is registered in that jurisdiction.
  - (b) Notwithstanding subparagraph (1)(a), any person gaining practical experience in an office of a practicing architect may use the title, appellation or designation "architectural associate."
- (2) Individuals registered in other jurisdictions cannot offer or perform architectural, engineering, or landscape architectural services to the public in Tennessee unless they are either acting as consulting associates in accordance with T.C.A. § 62-2-103(2) or working under the responsible charge of a Tennessee registrant.

Authority: T.C.A. §§ 62-2-101, 62-2-103, and 62-2-203(c).

Rule 0120-01-.10 Education and Experience Requirements-Engineer is amended by adding additional language and numbering the parts of the text of paragraph (2) so that as amended paragraph (2) shall read:

- (1)
  - (a) Accredited engineering programs. An engineering curriculum of four (4) years or more which was accredited by the Engineering Accreditation Commission (EAC) of the Accreditation Board for Engineering and Technology (ABET) (or its predecessor) at the time of graduation, or graduation was not more than two (2) academic years prior to accreditation, may be approved by the Board as being satisfactory.
  - (b) Nonaccredited engineering programs. An engineering curriculum of four (4) years or more which is a non-ABET accredited program shall be referred at the applicant's expense to a person or entity approved by the Board and qualified to evaluate equivalency to an ABET accredited engineering program for evaluation and recommendation. If the curriculum for the degree at the time of the applicant's graduation is substantially equivalent to ABET accreditation requirements, the application shall be reviewed in accordance with the requirements for applicants holding engineering degrees from institutions which do not have ABET accredited engineering programs in consideration of the factors outlined below.
  - (c) In reviewing applicants holding degrees from nonaccredited engineering programs, whether obtained in the United States or otherwise, which are substantially equivalent to degrees from ABET accredited programs, the Board may consider the following factors:
    1. Evidence of having obtained the statutory minimum acceptable progressive professional experience of a grade and character which indicates to the Board that the applicant may be competent to practice engineering; and
    2. At least five (5) references from individuals having knowledge of the applicant's technical competence as an engineer on projects of a grade and character which indicates to the Board that the applicant may be competent to practice engineering.
  - (d) Applicants meeting the above requirements shall be reviewed by the Board for determination of eligibility for either the Fundamentals of Engineering examination or the Principles and Practice of

Engineering examination or for registration by comity.

- (e) An engineering technology program, whether four (4) or two (2) years in length, is not considered by the Board to be an acceptable curriculum.
  - (f) Programs that allow credit for work experience and experiential learning (with the exception of cooperative education programs), or which are not part of an institution that is accredited or recognized as a degree-granting institution of higher learning within a national territory or in the United States, are not considered by the Board to be acceptable curricula.
  - (g) Engineering degrees from programs accredited by the Canadian Engineering Accreditation Board (CEAB) that were awarded in or after 1980 are considered substantially equivalent and do not require evaluation.
- (2) (a) In general, "progressive experience in the practice of engineering" consists of engineering experience which is supervised by a registered professional engineer. The Board may grant toward experience requirements for registration as an engineer one (1) year of credit, for completing one of the following:
- 1. Graduation with a Master's degree (or higher) in engineering from an approved curriculum; or
  - 2. Up to one (1) year of qualified experience obtained in an established cooperative education program, which is carried out within the framework of an approved engineering curriculum, and which has been approved by the Board; or
  - 3. Three (3) years or more qualified experience obtained prior to graduation under the direct supervision of a licensed engineer.
- No partial credit will be awarded for experience which does not fully meet the criteria listed in 0120-01-.10(2)(a)(1)-(3). Applicants are limited to gaining one (1) year of credit from the options listed in 0120-01-.10(2)(a)(1)-(3) towards progressive experience in the practice of engineering.
- (b) At least one (1) year of engineering experience must be completed in the United States. Unless otherwise noted above, an applicant's engineering experience must be obtained after graduation with the qualifying degree and completed by the date of the examination.

Authority: T.C.A. §§ 62-2-203(c) and 62-2-401.

\* If a roll-call vote was necessary, the vote by the Agency on these rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Susan K. Ballard, RID	X				
Frank W. Wagster, RA	X				
Ricky Bursi, PE	X				
Robert Campbell, Jr. PE	X				
R. Blair Parker, RLA	X				
Richard D. Thompson, RA	X				
Brian Tibbs, RA	X				
Kathryn S. Ware, PE	X				

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Board on February 15, 2018, and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of ninety (90) days of the filing of the proposed rule with the Secretary of State.

Date: July 17, 2018

Signature: *Elizabeth Goldstein*

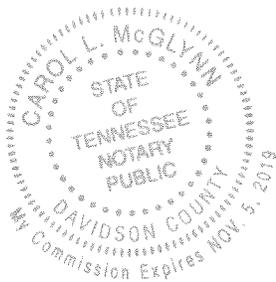
Name of Officer: Elizabeth Goldstein

Title of Officer: Assistant General Counsel

Subscribed and sworn to before me on: July 17, 2018

Notary Public Signature: *Carol L. McGlynn*

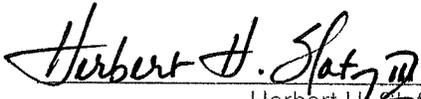
My commission expires on: Nov. 5, 2019



Agency/Board/Commission: Tennessee Board of Architectural and Engineering Examiners

Rule Chapter Number(s): 0120-01

All proposed rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

  
Herbert H. Slatery III  
Attorney General and Reporter  
8/2/2018  
Date

**Department of State Use Only**

Filed with the Department of State on: 8/9/18  
Effective on: 11/7/18  
  
Tre Hargett  
Secretary of State

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P.O. BOX 71986

## G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Labor and Workforce Development

DIVISION: Bureau of Workers' Compensation

SUBJECT: Adjuster and Adjusting Entity Certification Program

STATUTORY AUTHORITY: There is no law or regulation mandating the promulgation of this rule.

EFFECTIVE DATES: November 14, 2018 through June 30, 2019

FISCAL IMPACT: Minimal

STAFF RULE ABSTRACT: The change to the voluntary adjuster and adjusting entity certification program for workers' compensation insurance carriers is clerical in nature (to add the word "entity" to the Rule 0800-02-27-.09(3), which was omitted in the original version of these rules).

### **Regulatory Flexibility Addendum**

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

1. The type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, or directly benefit from the proposed rule: The rule will affect small employers that fall under the Tennessee Workers' Compensation Laws, which would be employers with at least five employees, or for those in the construction industry at least one employee. There should be no additional costs associated with these rule changes.
2. The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record: There is no additional record keeping requirement or administrative cost associated with these rule changes.
3. A statement of the probable effect on impacted small businesses and consumers: These rules should not have any impact on consumers or small businesses.
4. A description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and objectives of the proposed rule that may exist, and to what extent the alternative means might be less burdensome to small business: There are no less burdensome methods to achieve the purposes and objectives of these rules.
5. Comparison of the proposed rule with any federal or state counterparts: None.
6. Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule: None.

## **Impact on Local Governments**

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 “any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments.” (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

This proposed rule will have little, if any, impact on these entities.

**Additional Information Required by Joint Government Operations Committee**

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A)** A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

The change to the voluntary adjuster and adjusting entity certification program for workers' compensation insurance carriers is clerical in nature (to add the word "entity" to Rule 0800-02-27-.09(3), which was omitted in the original version of these rules).

- (B)** A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

This change is made for the purpose of correcting a typographical error in the original rule. There is no law or regulation mandating the promulgation of this rule.

- (C)** Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

No entity has urged adoption or rejection of these rules.

- (D)** Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

None

- (E)** An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

The effect of the rule change will be negligible.

- (F)** Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Troy Haley, Director of Administrative Legal Services and Legislative Liaison

- (G)** Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Troy Haley, Director of Administrative Legal Services and Legislative Liaison

- (H)** Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Tennessee Bureau of Workers' Compensation  
220 French Landing Drive, Floor 1-B  
Nashville, TN 37243  
(615) 532-0179  
troy.haley@tn.gov

- (I)** Any additional information relevant to the rule proposed for continuation that the committee requests.

None

**Department of State**  
**Division of Publications**  
 312 Rosa L. Parks Avenue, 8th Floor Snodgrass/TN Tower  
 Nashville, TN 37243  
 Phone: 615-741-2650  
 Fax: 615-741-5133  
 Email: [register.information@tn.gov](mailto:register.information@tn.gov)

**For Department of State Use Only**

Sequence Number: 08-15-18  
 Rule ID(s): 7226  
 File Date: 8/16/18  
 Effective Date: 11/14/18

## Proposed Rule(s) Filing Form

*Proposed rules are submitted pursuant to T.C.A. §§ 4-5-202, 4-5-207 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State. To be effective, the petition must be filed with the Agency and be signed by twenty-five (25) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.*

<b>Agency/Board/Commission:</b>	Department of Labor and Workforce Development
<b>Division:</b>	Bureau of Workers' Compensation
<b>Contact Person:</b>	Troy Haley
<b>Address:</b>	220 French Landing Drive Side 1-B, Nashville, Tennessee
<b>Zip:</b>	37243
<b>Phone:</b>	(615) 532-0179
<b>Email:</b>	troy.haley@tn.gov

**Revision Type (check all that apply):**

- Amendment  
 New  
 Repeal

**Rule(s) Revised** (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please enter only **ONE** Rule Number/Rule Title per row)

Chapter Number	Chapter Title
0800-02-27	Adjuster and Adjusting Entity Certification Program
Rule Number	Rule Title
0800-02-27-.09	Loss of Certification for Adjusting Entities

Amendments

Chapter 0800-02-27  
Adjuster and Adjusting Entity Certification Program

0800-02-27-.09 Loss of Certification for Adjusting Entities is amended by deleting the prior subsection (3) and replacing subsection (3) as follows:

- (3) An adjusting entity shall have thirty (30) calendar days from the date the Notice of Removal is sent in which to appeal by responding in writing to the removal and to submit any responsive supporting documentation to the Bureau for consideration. Failure of an adjusting entity to submit a timely response to the Notice of Removal shall result in the closure of the appeal.

Authority: T.C.A. §§ 50-6-101, 50-6-119, 50-6-127, 50-6-233, 50-6-415, and 50-6-419. Administrative History: Original rule filed March 2, 2018; effective May 31, 2018.

\* If a roll-call vote was necessary, the vote by the Agency on these rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)

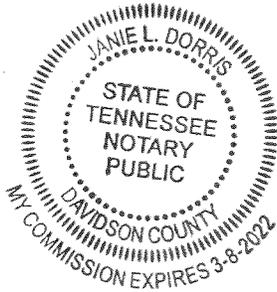
I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the (board/commission/other authority) on 6/26/2018 (date as mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State.

Date: June 26, 2018

Signature: Abbie Hudgens

Name of Officer: Abbie Hudgens

Title of Officer: Administrator, Bureau of Workers' Compensation



Subscribed and sworn to before me on: June 26, 2018

Notary Public Signature: Janie L Dorris

My commission expires on: March 8, 2022

All proposed rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Herbert H. Slatery III  
Herbert H. Slatery III  
Attorney General and Reporter  
8/10/2018  
Date

**Department of State Use Only**

Filed with the Department of State on: 8/16/18

Effective on: 11/14/18

Tre Hargett  
Tre Hargett  
Secretary of State

RECEIVED  
2018 AUG 16 AM 11:47  
SECRETARY OF STATE  
PHOTOGRAPHY

**G.O.C. STAFF RULE ABSTRACT**

DEPARTMENT: State Board of Education

DIVISION:

SUBJECT: Charter Schools

STATUTORY AUTHORITY: Tennessee Code Annotated, Sections 49-13-113 and 49-13-126

EFFECTIVE DATES: November 27, 2018 through June 30, 2019

FISCAL IMPACT: N/A

STAFF RULE ABSTRACT: This item presents a change to the Charter School Enrollment Rule to substitute to word "sex" for the word "gender" as gender is not defined in the code.

## **Regulatory Flexibility Addendum**

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process, all agencies shall conduct a review of whether a proposed rule or rule affects small business.

This rule does not affect small businesses.

## **Impact on Local Governments**

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 “any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments.” (See Public Chapter Number 1070 (<http://publications.tnsosfiles.com/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

This rule will not impact local governments.

**Additional Information Required by Joint Government Operations Committee**

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

This item presents a change to the Charter School Enrollment Rule to substitute to word "sex" for the word "gender" as gender is not defined in the code.

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

T.C.A. § 49-13-113 authorizes the State Board of Education to promulgate rules concerning lottery enrollment. T.C.A. § 49-13-126 authorizes the State Board of Education to promulgate rules and regulations for the administration of the Tennessee Public Charter School Act of 2002.

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

Charter authorizers and charter schools are most directly affected by this rule and urge adoption of this rule. The Department of Education and the State Board of Education urge adoption of this rule.

- (D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule or the necessity to promulgate the rule;

N/A

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

N/A

- (F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Elizabeth Taylor  
[Elizabeth.Taylor@tn.gov](mailto:Elizabeth.Taylor@tn.gov)

Nathan James  
[Nathan.James@tn.gov](mailto:Nathan.James@tn.gov)

Elizabeth Fiveash  
[Elizabeth.Fiveash@tn.gov](mailto:Elizabeth.Fiveash@tn.gov)

- (G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Elizabeth Taylor  
[Elizabeth.Taylor@tn.gov](mailto:Elizabeth.Taylor@tn.gov)

Nathan James  
[Nathan.James@tn.gov](mailto:Nathan.James@tn.gov)

Elizabeth Fiveash  
[Elizabeth.Fiveash@tn.gov](mailto:Elizabeth.Fiveash@tn.gov)

**(H)** Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Elizabeth Taylor  
[Elizabeth.Taylor@tn.gov](mailto:Elizabeth.Taylor@tn.gov)  
1st Floor, Andrew Johnson Tower  
710 James Robertson Parkway  
Nashville, TN 37243  
(615)-253-5707

Nathan James  
[Nathan.James@tn.gov](mailto:Nathan.James@tn.gov)  
1st Floor, Andrew Johnson Tower  
710 James Robertson Parkway  
Nashville, TN 37243  
(615)-532-3528

Elizabeth Fiveash  
[Elizabeth.Fiveash@tn.gov](mailto:Elizabeth.Fiveash@tn.gov)  
9th Floor, Andrew Johnson Tower  
710 James Robertson Parkway  
Nashville, TN 37243  
(615)- 253-1960

**(I)** Any additional information relevant to the rule proposed for continuation that the committee requests.

N/A

**Department of State  
Division of Publications**

312 Rosa L. Parks Ave., 8th Floor, Snodgrass/TN Tower  
Nashville, TN 37243  
Phone: 615-741-2650  
Email: [publications.information@tn.gov](mailto:publications.information@tn.gov)

**For Department of State Use Only**

Sequence Number: 08-31-18  
Rule ID(s): 7235  
File Date: 8/29/18  
Effective Date: 11/27/18

## Proposed Rule(s) Filing Form

*Proposed rules are submitted pursuant to Tenn. Code Ann. §§ 4-5-202, 4-5-207, and 4-5-229 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within ninety (90) days of the filing of the proposed rule with the Secretary of State. To be effective, the petition must be filed with the Agency and be signed by ten (10) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of ten (10) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.*

*Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).*

<b>Agency/Board/Commission:</b>	State Board of Education
<b>Division:</b>	
<b>Contact Person:</b>	Elizabeth Taylor
<b>Address:</b>	Andrew Johnson Tower, 1st Floor
<b>Zip:</b>	710 James Robertson Pkwy
<b>Phone:</b>	37243
<b>Email:</b>	615-253-5707

**Revision Type (check all that apply):**

- Amendment  
 New  
 Repeal

**Rule(s)** (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that **ALL** new rule and repealed rule numbers are listed in the chart below. Please enter only **ONE** Rule Number/Rule Title per row)

Chapter Number	Chapter Title
0520-14-01	Charter Schools
Rule Number	Rule Title
0520-14-01-.04	Enrollment

**RULES  
OF THE  
STATE BOARD OF EDUCATION  
CHAPTER 0520-14-01  
CHARTER SCHOOLS**

**0520-14-01-.04 ENROLLMENT.**

- (1) Charter schools shall conduct an initial student application period of at least thirty (30) days. During this period, all eligible students may apply.
- (2) A charter school shall not exclude students from enrollment based on race, color, ethnicity, national origin, religion, income level, disability, proficiency in the English language, or academic ability.
- (3) A charter school may submit a charter school application that seeks to limit enrollment to a single gender~~sex~~, as long as such enrollment proposal is in compliance with federal law.
- (4) A charter school shall enroll an eligible student who submits a timely application, unless the number of applications exceeds the capacity of a program, class, grade level, or building.
- (5) Students that attended the charter school during the previous school year shall be given first enrollment preference and excluded from entering into a lottery. Students that attended the charter school during the previous school year shall not be required to re-apply. Students enrolling in a charter school from another charter school, even if both schools share a sponsor or governing body, shall be subject to the preferences outlined in paragraph (9).
- (6) A charter school may give an enrollment preference to children of a teacher, sponsor, or member of the governing body of the charter school, not to exceed ten percent (10%) of total enrollment or twenty-five (25) students, whichever is less, in which case such students shall also be given first enrollment preference and excluded from entering into a lottery.
- (7) If, at the end of the initial student application period, the number of eligible students seeking to be enrolled does not exceed the school's capacity or the capacity of a program, class, grade level or building, then the enrollment of eligible students may proceed on a first come, first served basis.
- (8) If, at the end of the initial student application period, the number of eligible students seeking to be enrolled exceeds the school's capacity or the capacity of a program, class, grade level or building, then the enrollment of eligible students shall be determined on the basis of a lottery.
  - (a) Any such lottery shall be conducted within thirty (30) calendar days of the close of the initial student application period.
  - (b) A charter school shall provide to the department of education certification by an independent accounting firm or by a law firm that each lottery conducted for enrollment purposes complied with the requirements of T.C.A. § 49-13-113. Charter schools that choose to participate in the enrollment process of their chartering authority may use certification from the chartering authority to satisfy this requirement.

- (c) In lieu of an independent accounting firm or law firm, charter schools may request that the department of education review and approve the lottery process prior to the lottery.
- (9) A charter school shall give enrollment preferences in the following order:
- (a) Students enrolled in a pre-K program operated by the charter school sponsor;
  - (b) Students enrolled in a charter school that has an articulation agreement with the enrolling charter school; provided, that the articulation agreement has been approved by the chartering authority;
  - (c) Siblings of students already enrolled in the charter school;
  - (d) Students from a group or groups set forth in T.C.A. § 49-13-106(b)(1)(C) if the charter school has been approved with the focus of serving such students;
  - (e) Students residing within the LEA in which the charter school is located who were enrolled in another public school during the previous school year; and
  - (f) Students residing outside the LEA in which the charter school is located who were enrolled in another public school during the previous school year; if permitted through the chartering authority's out-of-district enrollment policy.
- (10) If enrollment within a group of preference set out in paragraph (9) exceeds the planned capacity of the school, enrollment within that group shall be determined on the basis of a lottery.
- (11) A non-charter public school converting partially or entirely to a charter school under T.C.A. § 49-13-106 shall give enrollment preference to students who reside within the former attendance area of that public school. Parents whose children are enrolled in the existing public school to be converted shall have the option to enroll their children in another public school operated by the LEA without penalty. The enrollment preference for students who reside within the former attendance area excludes those students from entering into a lottery.
- (12) Students living in other school zones may enroll in a conversion charter school after those living in the school zone have the opportunity to enroll, but only if there is program, class, grade level, and building capacity to serve the out-of-zone students. If applications by out-of-zone students exceed the charter school's capacity, then enrollment of out-of-zone students shall be determined on the basis of a lottery. Out-of-zone students who attended the school the previous school year and such students' siblings may be given preference in enrollment.
- (13) A charter school may refuse to admit any student who is expelled from another public school or district or who is in the process of being expelled from another public school or district.

**Authority:** T.C.A. §§ 49-13-113 and 49-13-126. **Administrative History:** Original rule filed March 25, 2010; effective August 29, 2010. Repeal and new rule filed March 21, 2012; effective August 29, 2012.

\* If a roll-call vote was necessary, the vote by the Agency on these rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Haden Bawcum	X				
Darrell Cobbins	X				
Bob Eby	X				
Mike Edwards	X				
Gordon Ferguson				X	
Lillian Hartgrove	X				
Elissa Kim	X				
Fielding Rolston	X				
Wendy Tucker	X				
Lang Wiseman	X				

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Tennessee State Board of Education on April 20, 2018 and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of ninety (90) days of the filing of the proposed rule with the Secretary of State.

Date: 7/30/2018

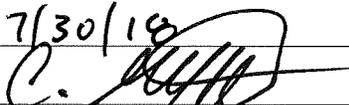
Signature: 

Name of Officer: Elizabeth Taylor

Title of Officer: General Counsel



Subscribed and sworn to before me on: 7/30/18

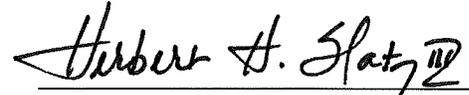
Notary Public Signature: 

My commission expires on: 3-8-21

Agency/Board/Commission: Tennessee State Board of Education

Rule Chapter Number(s): Rule 0520-14-01-.04 Enrollment

All emergency rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.



Herbert H. Slatery III  
Attorney General and Reporter

8/16/2018

Date

**Department of State Use Only**

Filed with the Department of State on: 8/29/18

Effective on: 11/27/18



Tre Hargett  
Secretary of State

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BUREAU OF LEGAL SERVICES

## G.O.C. STAFF RULE ABSTRACT

<u>DEPARTMENT:</u>	University of Tennessee
<u>DIVISION:</u>	
<u>SUBJECT:</u>	Student Code of Conduct
<u>STATUTORY AUTHORITY:</u>	Public Chapter 980 (2018)
<u>EFFECTIVE DATES:</u>	July 30, 2018 through January 26, 2019
<u>FISCAL IMPACT:</u>	None
<u>STAFF RULE ABSTRACT:</u>	<p>Public Chapter 980 requires revisions to the student code of conduct for The University of Tennessee, Knoxville.</p> <p>The purposes of the revisions are to:</p> <ol style="list-style-type: none"><li>(1) Clarify that e-mail is an official method of communication used by the University about student conduct matters;</li><li>(2) Ensure that the student conduct process is carried out in a manner that is free from conflicts of interest consistent with due process of law and in cases involving allegations of sexual assault, dating violence, domestic violence, or stalking, must include protections for the accused student/respondent analogous to, and no less protective than, the conflict of interest provisions of Tennessee Code Annotated § 4-5-303;</li><li>(3) Ensure that in cases of sexual assault, dating violence, domestic violation, or stalking, at least seventy-two (72) hours prior to a hearing, the University shall provide the accused student/respondent with notice of the time, place, and date of the hearing; the name of each witness the University expects to present at the hearing and those the University may present if the need arises; notice of the right to request a copy of the University's investigative file, redacted in accordance with the Family Educational Rights and Privacy Act of 1974, (20 U.S.C. § 1232g), and the federal regulations implementing that statute, as amended;</li></ol>

and notice of the right to request copies of all documents, copies of all electronically stored information, and access to tangible evidence that the University has in its possession, custody, or control and may use to support claims or defenses, unless the use would be solely for impeachment; and

(4) Ensure that in a case involving sexual assault, dating violence, domestic violence, or stalking, the University shall provide the accused student/respondent with notice of the role of advisors (e.g., attorneys) in the student conduct process, including the extent to which they are allowed to advise or represent the student in an investigation or hearing.

## **Impact on Local Governments**

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 “any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments.” (See Public Chapter Number 1070 (<http://publications.tnsosfiles.com/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

The rules are not anticipated to have an impact on local governments.

**Additional Information Required by Joint Government Operations Committee**

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A)** A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

Public Chapter 980 requires revisions to the student code of conduct for The University of Tennessee, Knoxville.

The purposes of the revisions are to:

- (1) Clarify that e-mail is an official method of official method of communication used by the University about student conduct matters;
- (2) Ensure that the student conduct process is carried out in a manner that is free from conflicts of interest consistent with due process of law and in cases involving allegations of sexual assault, dating violence, domestic violence, or stalking, must include protections for the accused student/respondent analogous to, and no less protective than, the conflict of interest provisions of Tennessee Code Annotated § 4-5-303;
- (3) Ensure that in cases of sexual assault, dating violence, domestic violation, or stalking, at least seventy-two (72) hours prior to a hearing, the University shall provide the accused student/respondent with notice of the time, place, and date of the hearing; the name of each witness the University expects to present at the hearing and those the University may present if the need arises; notice of the right to request a copy of the University's investigative file, redacted in accordance with the Family Educational Rights and Privacy Act of 1974, (20 U.S.C. § 1232g), and the federal regulations implementing that statute, as amended; and notice of the right to request copies of all documents, copies of all electronically stored information, and access to tangible evidence that the University has in its possession, custody, or control and may use to support claims or defenses, unless the use would be solely for impeachment; and
- (4) Ensure that in a case involving sexual assault, dating violence, domestic violence, or stalking, the University shall provide the accused student/respondent with notice of the role of advisors (e.g., attorneys) in the student conduct process, including the extent to which they are allowed to advise or represent the student in an investigation or hearing.

- (B)** A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

Public Chapter 980 (2018)

- (C)** Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

Students of The University of Tennessee are most directly affected by this rule. The student member of the UT Board of Trustees voted to approve the rule. No person requested to address the Board of Trustees during the part of the meeting set aside for public comment. The Board of Trustees requests adoption of this rule.

- (D)** Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule or the necessity to promulgate the rule;

None

- (E)** An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

None

- (F)** Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Betsy Smith  
Director, Office of Student Conduct and Community Standards  
The University of Tennessee, Knoxville

Matthew Scoggins  
General Counsel  
The University of Tennessee

- (G)** Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Betsy Smith  
Director, Office of Student Conduct and Community Standards  
The University of Tennessee, Knoxville

Matthew Scoggins  
General Counsel  
The University of Tennessee

- (H)** Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Betsy Smith  
Director, Office of Student Conduct and Community Standards  
The University of Tennessee, Knoxville  
412 Student Services Building  
Knoxville, TN 37996-0245

Matthew Scoggins  
General Counsel  
The University of Tennessee  
719 Andy Holt Tower  
Knoxville, TN 37996-0170  
[scoggins@tennessee.edu](mailto:scoggins@tennessee.edu)  
865-974-3245

- (I)** Any additional information relevant to the rule proposed for continuation that the committee requests.

**Department of State****Division of Publications**

312 Rosa L. Parks Ave., 8th Floor, Snodgrass/TN Tower

Nashville, TN 37243

Phone: 615-741-2650

Email: [publications.information@tn.gov](mailto:publications.information@tn.gov)**For Department of State Use Only**Sequence Number: 07-18-18Rule ID(s): 7215File Date: 7/30/18Last Effective Day: 1/26/19

# Emergency Rule Filing Form

*Emergency rules are effective from date of filing, unless otherwise stated in the rule, for a period of up to 180 days.*

<b>Agency/Board/Commission:</b>	The University of Tennessee (Knoxville)
<b>Division:</b>	
<b>Contact Person:</b>	Matthew Scoggins, General Counsel
<b>Address:</b>	719 Andy Holt Tower, 1331 Circle Park, Knoxville, TN
<b>Zip:</b>	37996-0170
<b>Phone:</b>	865-974-3245
<b>Email:</b>	scoggins@tennessee.edu

**Revision Type (check all that apply):**

- Amendment  
 New  
 Repeal

**Statement of Necessity:**

The University of Tennessee seeks to amend its student conduct rules to comply with Public Chapter 980, the Student Due Process Protection Act. Public Chapter 980 took effect on May 21, 2018 for the purpose of promulgating rules. For all other cases, Public Chapter 980 takes effect on July 1, 2018. Section 14 of Public Chapter 980 states: "Public institutions of higher education may implement this part by promulgating emergency rules pursuant to the Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5."

**Rule(s) Revised** (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that **ALL** new rule and repealed rule numbers are listed in the chart below. Please enter only **ONE** Rule Number/Rule Title per row)

Chapter Number	Chapter Title
1720-04-03	Student Code of Conduct
Rule Number	Rule Title
1720-04-03-.06	Student Conduct Process: Initial Stages
1720-04-03-.07	Student Conduct Process: Resolutions
1720-04-03-.08	Student Conduct Board: Hearings and Appeals
1720-04-03-.09	Sanctions
1720-04-03-.13	Retention, Disclosure, and Expungement of Student Disciplinary Records

**RULES  
OF  
THE UNIVERSITY OF TENNESSEE  
(KNOXVILLE)**

**CHAPTER 1720-04-03  
STUDENT CODE OF CONDUCT**

1720-04-03-.01	Preamble	1720-04-03-.08	Student Conduct Board: Hearings and Appeals
1720-04-03-.02	Jurisdiction	1720-04-03-.09	Sanctions
1720-04-03-.03	Relationship Between the Code and Criminal Law	1720-04-03-.10	Honor Statement
1720-04-03-.04	Standards of Conduct	1720-04-03-.11	Policy on Amnesty for Individual Good Samaritans and Students in Need of Emergency Medical Attention
1720-04-03-.05	Fundamental Rights	1720-04-03-.12	Emergency Powers
1720-04-03-.06	Student Conduct Process: Initial Stages	1720-04-03-.13	Retention Maintenance, Disclosure, and Expungement of Student Disciplinary Records
1720-04-03-.07	Student Conduct Process: Resolutions	1720-04-03-.14	Definitions of Terms Used in the Code

**1720-04-03-.01 PREAMBLE.**

- (1) Students at the University of Tennessee are members of both the University community and the larger community of which the University is a part. Accordingly, students are responsible for conducting themselves in a lawful manner as well as in compliance with University rules and policies. In addition, the University has developed a set of aspirational goals titled, Principles of Civility and Community, which encourages all members of the University community to foster a learning environment where diversity is valued, respected, and celebrated.
- (2) The University has established the Student Code of Conduct ("Code") in order to advance the mission of the University and sustain a culture of excellence by: maintaining a safe learning environment; requiring students to conduct themselves in ways that allow for their personal growth and development as well as others, in the most positive manner possible; protecting the rights and privileges of all members of the University community; providing a basis for orderly conduct of the affairs of the University; promoting a positive relationship between the University and its surrounding community; preserving the University's reputation and property; encouraging students to engage in conduct that brings credit to themselves and the University; and ensuring that each student who matriculates at the University graduates ready to contribute to society as an ethical and law-abiding citizen.
- (3) The University's behavioral standards are set forth in the Code's Standards of Conduct (Section .04). Students who engage in conduct that is inconsistent with the Standards of Conduct are subject to University disciplinary action. The process by which the University investigates and resolves alleged violations of the Standards of Conduct is called the student conduct process. The student conduct process resolves allegations of misconduct but also is an educational process designed to promote learning and development as it relates to appropriate decision making. The student conduct process is consistent, fair, and provides means of resolution that are commensurate with the skills and abilities of the participants in the process.

- (4) The effectiveness of the student conduct process rests partially upon the participation of all members of the University community. Active participation in the process by students, faculty, and staff reflects a willingness to address the difficult issues brought before them for the betterment of individual students and the University community. This involvement is vital to the establishment of true community standards.
- (5) Authority and responsibility relating to the Code are delegated to the Vice Chancellor for Student Life, who has delegated certain authority and responsibility to the Office of Student Conduct and Community Standards ("SCCS").
- (6) The University is committed to respecting students' constitutional rights. The Code shall be interpreted in a way that does not violate students' constitutional rights, including, without limitation, the rights protected by the First Amendment to the United States Constitution.
- (7) Students are responsible for being fully acquainted with and for complying with the Code, the applicable undergraduate or graduate catalog, the student handbook (Hilltopics), and other rules and policies relating to students.

#### **1720-04-03-.02 JURISDICTION.**

- (1) **Geographical Limits.** The Code applies to conduct that occurs on University-controlled property. However, with respect to conduct that occurs off of University-controlled property, the University has the discretion under the Code to discipline a student for conduct that violates the Standards of Conduct only if the student's conduct: (1) occurs in connection with a University-affiliated activity including, without limitation, an overseas study program or a clinical, field, internship, or in-service experience; (2) consists of academic dishonesty or research misconduct; (3) is prohibited by local, state, or federal law, and the conduct was committed within the Knoxville Area (or, for UTSI students, the conduct was committed within Coffee County or Franklin County); (4) is fairly attributable to a student organization based on a consideration of the criteria in Section .02(4); (5) is committed against another member of the University community; or (6) threatens, or indicates that the student poses a threat to, the health, safety, or welfare of others or the security of any person's property including, without limitation, drug-related offenses, arson, assault, fraud, hazing, participation in group violence, sexual misconduct, relationship violence, stalking, and theft.
- (2) **Professional and Ethical Standards.** Graduate or professional programs within the University may take separate and independent academic action against students for alleged violations of professional and/or ethical standards using procedures other than those contained in the Code.
- (3) **Responsibility for Conduct.** Each student shall be responsible for his/her conduct from the time of application for admission through the actual awarding of a degree, even though conduct may occur before classes begin or after classes end, as well as during the academic year and during periods between terms of actual enrollment (and even if his/her conduct is not discovered until after a degree is awarded).
- (4) **Student Organizations' Responsibility for Violations of the Standards of Conduct.** Notwithstanding anything in the Code to the contrary, a student organization may be found responsible for conduct that violates the Standards of Conduct only if the conduct is fairly attributable to the student organization. Whether conduct is fairly attributable to the student organization will be determined by SCCS based on a totality of the following

criteria:

- (a) Whether the misconduct was endorsed by one (1) or more officers of the student organization ("endorsed by" means: having prior knowledge that the misconduct was reasonably likely to occur and failing to take reasonable preventative or corrective action; failing to attempt to stop known misconduct while it is occurring; and/or helping to plan, promote, or carry out the misconduct);
- (b) Whether the misconduct occurred in connection with an activity:
  - 1. Financed by the student organization and/or one (1) or more members or alumni of the student organization who contributed personal funds in lieu of organizational funds;
  - 2. Related to initiation into, admission into, affiliation with, or as a condition for continued membership in the student organization; and/or
  - 3. Advertised, promoted, or publicized in such a way that a reasonable student viewing or hearing the advertisement, promotion, or publication would believe that the activity was affiliated with the student organization.
- (c) Whether the misconduct occurred on property owned, controlled, rented, leased, and/or used by the student organization and/or any of its members/alumni acting on the student organization's behalf; and/or
- (d) Whether a member of the student organization attempted to conceal the activity connected with the misconduct or conceal the misconduct of another member of the student organization.

**1720-04-03-.03 RELATIONSHIP BETWEEN THE CODE AND CRIMINAL LAW.**

- (1) Independent Action. The Code has been adopted in furtherance of the University's interests and serves to supplement, rather than substitute for, the enforcement of civil and criminal law. Accordingly, University disciplinary action may be instituted against a student whose conduct potentially violates both criminal law and the Standards of Conduct without regard to the pending status of criminal charges or civil litigation. At the discretion of SCCS, disciplinary action relating to a violation of the Standards of Conduct may be carried out prior to, simultaneously with, or following criminal proceedings. Students alleged to have violated the Standards of Conduct may not challenge any aspect of the University's student conduct process on the grounds that criminal charges, civil litigation, or other University proceedings regarding the same incident are pending or have been terminated, dismissed, reduced, or have not yet been adjudicated.
- (2) University's Interaction with Other Entities. The University will cooperate with law enforcement and other government agencies in the enforcement of criminal law on University-controlled property and in the conditions imposed by criminal courts for the rehabilitation of students who have violated the criminal law.
- (3) Withdrawals. If a Respondent voluntarily withdraws from the University before the conclusion of the student conduct process, SCCS retains the right to investigate and resolve the allegations made against the Respondent as a condition of the Respondent being allowed to re-enroll in the University. A disciplinary hold may remain in place or be implemented after the student withdraws in order to enforce this Section .03(3).

- (4) Time Extensions and Rescheduling. Any time period described in the Code may be extended for good cause at the discretion of SCCS. Any meeting or hearing described in the Code may be rescheduled for good cause at the discretion of SCCS.
- (5) Voluntary Impairment. A student's voluntary impairment to themselves resulting from the use and/or consumption of alcohol, drugs, chemicals, and/or other substances does not excuse or diminish a violation of the Code, except as provided in Section .11 (Policy on Amnesty for Individual Good Samaritans and Students in Need of Emergency Medical Attention).
- (6) Other Rights – Sexual Misconduct, Relationship Violence, Stalking, or Retaliation. In addition to rights granted in the Code, in cases involving an allegation of sexual misconduct, relationship violence, stalking, or retaliation, the Complainant and the Respondent shall have the rights outlined in the University's policies and procedures for investigating and resolving complaints of sexual misconduct, relationship violence, stalking, or retaliation in accordance with Title IX of the Education Amendments of 1972, the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, and other applicable law.

**1720-04-03-.04 STANDARDS OF CONDUCT.** Students are prohibited from engaging in the following types of misconduct:

- (1) Academic Dishonesty. Cheating, plagiarism, or any other act of academic dishonesty, including, without limitation, an act in violation of the Honor Statement.
- (2) False Information. Providing false information to a University official.
- (3) Misuse of Information in Connection with University Investigation or Hearing. Falsifying, distorting, misrepresenting, or withholding information in connection with a University investigation or hearing, except as provided in Section .05(1)(i).
- (4) Misconduct Relating to Records or Identification. Forging, altering, destroying, falsifying, or misusing records or identification, whether in print or electronic form.
- (5) Harm to Others. Causing physical harm to any person; endangering the health, safety, or welfare of any person; engaging in conduct that causes a reasonable person to fear harm to his/her health or safety; or making an oral or written statement that an objectively reasonable person hearing or reading the statement would interpret as a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals.
- (6) Harassment. Unwelcome conduct that is so severe or pervasive, and objectively offensive, that it substantially interferes with the ability of a person to work, learn, live, or participate in or benefit from the services, activities, or privileges provided by the University. In no event shall this rule be construed to discipline a student for speech protected by the First Amendment to the United States Constitution (e.g., mere insulting or offensive speech).
- (7) Sexual Misconduct, Relationship Violence, Stalking, and/or Retaliation. Violating the University's Policy on Sexual Misconduct, Relationship Violence, Stalking, and/or Retaliation.

- (8) Invasion of Privacy. Invasion of another person's privacy when that person has a reasonable expectation of privacy, including, without limitation, using electronic or other means to make a video or photographic record of any person in a location in which the person has a reasonable expectation of privacy, without the person's knowledge or consent. This includes, but is not limited to, making a video or photographic record of a person in shower/locker rooms or restrooms. The storing, sharing, and/or distributing of such nonconsensual recordings by any means is also prohibited.
- (9) Private or Public Property. Any of the following conduct with respect to private or public property, including, without limitation, University-controlled property: theft; misappropriation; unauthorized possession, use, sale, duplication, or entry; vandalism; destruction; damage; or conduct that is reasonably likely to cause damage.
- (10) Hazing. Any intentional or reckless act, on or off University-controlled property, by one (1) student, acting alone or with others, which is directed against any other student, which endangers the mental or physical health, safety, or welfare of that student, or which induces or coerces a student to endanger his or her mental or physical health, safety, or welfare. "Hazing" does not include customary athletic events or similar contests or competitions and is limited to those actions taken and situations created in connection with initiation into or affiliation with any organization.
- (11) Disorderly Conduct. Fighting or other physically violent or physically threatening conduct; creating a hazardous or physically offensive condition by any act that serves no legitimate purpose; making noise that could unreasonably disturb others who are carrying on lawful activities; or conduct that breaches the peace.
- (12) Lewd, Indecent, or Obscene Conduct. Engaging in lewd, indecent, or obscene conduct, including, without limitation, public exposure of one's sexual organs, public urinating, and public sexual acts.
- (13) Imminent Lawless Action. Engaging in speech either orally or in writing that is directed to inciting or producing imminent lawless action and is likely to incite or produce such action.
- (14) Fire Safety. Any act of arson; falsely reporting a fire, the presence of an explosive or incendiary device, or other emergency; setting off a false fire alarm; or tampering with, removing, or damaging fire alarms, fire extinguishers or any other safety or emergency equipment from its proper location except when removed in a situation in which there is a reasonable belief of the need for such equipment.
- (15) University Keys, Access Cards, and Identification. Possessing, using, or duplicating University keys, University access cards, or University identification cards without authorization from the University.
- (16) Information Technology. Theft, misuse, or unauthorized use of information technology facilities, resources, or access codes, including, without limitation: unauthorized entry into or transfer of a file; using another person's identification and/or password without that person's consent; using information technology facilities or resources to interfere with the work of another student, faculty member, staff member, or other member of the University community; using information technology facilities or resources to interfere with normal operation of a University information technology system or network; circumventing University information technology system or network security; using information technology facilities or resources in violation of copyright laws; falsifying an e-mail

header; and conduct that violates the University's policy on the acceptable use of information technology resources.

- (17) **Weapons.** Possessing, carrying, using, storing, or manufacturing any weapon on University-controlled property or in connection with a University-affiliated activity, unless authorized in writing by the Chief of Police or his/her designee or unless federal or state law affirmatively gives a student a right, irrespective of the Code, to possess or carry a weapon on University-controlled property or in connection with a University-affiliated activity.
- (18) **Alcohol-Related Conduct – University Property or University Activities.** Consuming, manufacturing, possessing, distributing, dispensing, selling, or being under the influence of alcoholic beverages on University-controlled property or in connection with a University-affiliated activity unless expressly permitted by University policy.
- (19) **Alcohol-Related Conduct Prohibited by Law.** Consuming, manufacturing, possessing, distributing, dispensing, selling, or being under the influence of alcoholic beverages, if prohibited by federal, state, or local law.
- (20) **Providing Alcohol to Underage Person.** Providing an alcoholic beverage to a person younger than twenty-one (21) years of age, unless permitted by law.
- (21) **Drugs and Drug Paraphernalia.** Using, manufacturing, possessing, distributing, selling, dispensing, or being under the influence of drugs, if prohibited by federal, state, or local law; using, manufacturing, possessing, distributing, or selling drug paraphernalia, if prohibited by federal, state, or local law; using or possessing a prescription drug if the prescription was not issued to the student; or distributing or selling a prescription drug to a person to whom the prescription was not originally issued.
- (22) **Failure to Fulfill a University Financial Obligation.** Failing to timely fulfill a University bill, account, or other financial obligation owed to the University.
- (23) **Failure to Respond, Comply, or Identify.** Failing to respond to a request to report to a University administrative office; failing to comply with a lawful directive of a University employee or other public official acting within the scope of his/her duties, except as provided in Section .05(1)(i); or failing to identify oneself to a University employee or other public official acting within the scope of his/her duties when requested to do so.
- (24) **Failure to Appear.** Failing to appear at a University hearing, including, without limitation, a hearing of a University conduct board, following a request to appear either as a party or as a witness.
- (25) **Violation of Interim Administrative Actions, Disciplinary Sanctions, or Conditions of Re-Enrollment.** Violating the terms of a no-contact directive, an interim restriction, a disciplinary sanction, or a condition of re-enrollment imposed by the University.
- (26) **Obstruction or Disruption of University Activity.** Obstructing or disrupting teaching, learning, studying, research, public service, administration, disciplinary proceedings, emergency services, or any other University-affiliated activity, or the free flow of pedestrian or vehicular traffic on University-controlled property. In no event shall this rule be construed to discipline a student for speech protected by the First Amendment to the United States Constitution.

- (27) Violation of University Policy or Rule. Violating a University policy or rule, including, without limitation, University policies or rules relating to facilities' use, smoking, the acceptable use of information technology resources, research misconduct, finder's fees relating to clinical investigations involving human subjects or access to University data or materials, University libraries, dining services, parking or transportation, University identification card use, sexual harassment, residence halls, and registered student organizations.
- (28) Act Prohibited by Law. Committing an act that is prohibited by local, state, or federal law.
- (29) Attempted Violation; Accessory to Violation. Attempting to commit a violation of a Standard of Conduct or being an accessory to the commission of an act or attempted act in violation of a Standard of Conduct.
- (30) Retaliation. Engaging in retaliation. Retaliation is an act or omission committed by a student because of another person's participation in a protected activity that would discourage a reasonable person from engaging in protected activity. Retaliation violates the Standards of Conduct regardless of whether the underlying allegation of a violation of the Standards of Conduct is ultimately found to have merit. Retaliation can include, without limitation: (1) an act or omission committed against a person's family, friends, advisors, and/or other persons reasonably expected to provide information in connection with a University investigation or hearing; and (2) an act or omission committed by a student through a third party.

**1720-04-03-.05 FUNDAMENTAL RIGHTS.**

- (1) Rights of the Respondent. The following summarizes the rights granted to a Respondent in the student conduct process:
  - (a) Right to be assisted by an Advisor during all stages of the student conduct process, in accordance with Section .05(3);
  - (b) Right to an opportunity for an Educational Conference, in accordance with Section .06(6);
  - (c) Right to resolve allegations of misconduct and/or sanctions through a Formal Hearing, in accordance with Section .07(2);
  - (d) Right to receive notice of meetings and hearings at which the Respondent may be present and receive access to records used during those meetings and hearings, as provided in the Code;
  - (e) Right to the presumption of innocence (i.e., the Conduct Officer bears the burden of presenting information demonstrating that it is more likely than not that the Respondent violated a Standard of Conduct, as alleged in the Notice of Allegations);
  - (f) Right to not be directly questioned in a hearing by anyone other than the Student Life Hearing Officer or the Chairperson of the Student Conduct Board ("SCB");
  - (g) Right to challenge the fairness and/or impartiality of a Student Life Hearing Officer, a member of the SCB, or a member of the Appellate Board;

- (h) Right to have a SCB Hearing conducted in accordance with Section .08, including, without limitation, the right to present information to the SCB, the right to propose questions for the Chairperson to ask witnesses, the right to request that information be excluded from the SCB's consideration, and the right to make a closing statement;
  - (i) Right to refrain from presenting information and witnesses during a hearing before the Student Life Hearing Officer or the SCB, and the right to not have the Student Life Hearing Officer or SCB draw an inference adverse to the Respondent if the Respondent chooses not to present information or witnesses;
  - (j) Right to Notice of Decision of the SCB, in accordance with Section .08(5);
  - (k) Right to appeal the decisions of the SCB that are contained in the Notice of Decision, in accordance with Section .08(6);
  - (l) Right to receive a copy of a notice of an initial, interim, or final decision, or a change in such a decision, issued by the Vice Chancellor for Student Life, SCCS, a Student Life Hearing Officer, the SCB, and/or the Appellate Board (e.g., Notice of Allegations, Notice of Decision, Notice of Final Decision), simultaneously with the Complainant's receipt of a copy of the notice of the decision; and
  - (m) Right to appeal a decision issued by SCCS, a Student Life Hearing Officer, and/or the SCB, and receive a notice containing information about the right to appeal simultaneously with the Complainant's receipt of a notice of such information, in accordance with Section .07 and Section .08.
- (2) Rights of the Complainant.
- (a) A Complainant shall be granted equivalent rights to the rights granted to a Respondent under the Code including, without limitation:
    1. Right to meet with SCCS to ask questions and receive information about the student conduct process, including, without limitation, the status of an investigation;
    2. Right to receive notice of meetings and hearings at which the Complainant may be present and receive access to records used during those meetings and hearings, as provided in the Code;
    3. Right to be assisted by an Advisor during all stages of the student conduct process, in accordance with Section .05(3);
    4. Right to present information and witnesses during meetings and hearings, including, without limitation, investigations, or hearings before a Student Life Hearing Officer, and SCB Hearings;
    5. Right to not be directly questioned in a hearing by anyone other than the Student Life Hearing Officer or the Chairperson of the Student Conduct Board ("SCB");

6. Right to challenge the fairness and/or impartiality of a Student Life Hearing Officer, a member of the SCB, or a member of the Appellate Board;
  7. Right to receive a copy of a notice of an initial, interim, or final decision, or a change in such a decision, issued by the Vice Chancellor for Student Life, SCCS, a Student Life Hearing Officer, the SCB, and/or the Appellate Board (e.g., Notice of Allegations, Notice of Decision, Notice of Final Decision), simultaneously with the Respondent's receipt of a copy of the notice of the decision;
  8. Right to appeal a decision issued by SCCS, a Student Life Hearing Officer, and/or the SCB, and receive a notice containing information about the right to appeal simultaneously with the Complainant's receipt of a notice of such information, in accordance with Section .07 and Section .08; and/or
  9. Right to otherwise participate in the student conduct process.
- (b) Notwithstanding any provision of the Code to the contrary, including, without limitation, this Section .05(2), a Complainant shall not have the right to attend a meeting or hearing, receive information concerning, or otherwise participate in the student conduct process if such attendance, receipt of information, or participation would violate state or federal law.
- (3) Right to an Advisor. The Complainant and the Respondent may choose to be assisted by one (1) Advisor during all stages of the student conduct process.
- (a) Selection of an Advisor. SCCS encourages a Complainant or a Respondent who chooses to be assisted by an Advisor to consider selecting a University employee who has received training from SCCS about the student conduct process. The Complainant and the Respondent may obtain the names of trained advisors from SCCS. At their own expense, the Complainant and the Respondent may choose a person who is not employed by the University to serve as an Advisor (e.g., friend, attorney). The Complainant and the Respondent should select as an Advisor a person whose schedule allows attendance at the scheduled date, time, and place for meetings and hearings scheduled by SCCS because meeting and hearing delays generally will not be granted due to the scheduling conflicts of an Advisor.
- (b) Role of an Advisor. The role of an Advisor is limited to assisting, advising, and/or supporting a Complainant or Respondent during the student conduct process. An Advisor is not permitted to speak for or on behalf of a Complainant or Respondent, appear in lieu of a Complainant or Respondent, participate as a witness, or participate directly in any other manner during any phase of the student conduct process, including without limitation, a SCB Hearing. However, in a UAPA Hearing, the Complainant and the Respondent are entitled to have an attorney advocate on their behalf.
- (4) Notification of the Right to Have an Advisor. SCCS shall provide written notice to the Complainant and the Respondent of their rights to an Advisor. The notice shall contain an explanation of the role of an Advisor during the student conduct process.

1720-04-03-.06 Student Conduct Process: Initial Stages.

- (1) Receipt and Review of Allegations of Misconduct. SCCS may initiate the student conduct process on the basis of written allegations received from any source, including, without limitation, a student, a faculty member, a University housing employee, or a law enforcement agency. SCCS also may initiate the student conduct process in the absence of written allegations if SCCS becomes aware, through other means, of potential misconduct committed by a student. Upon receipt of written allegations or other information concerning potential student misconduct, SCCS will review the information and determine whether to initiate the student conduct process. SCCS's determination of whether to initiate the student conduct process generally will be based on: the preliminary investigation by SCCS or other University official(s), if any, into the allegations received by SCCS; SCCS's determination of whether the alleged conduct falls within the jurisdiction of the Code; and SCCS's determination of whether the alleged conduct, if true, violated the Standards of Conduct.
  
- (2) Investigation of Allegations of Misconduct. SCCS may investigate the allegations against the Respondent by interviewing witnesses and obtaining other information. SCCS is not obligated to interview a witness identified by the Respondent or the Complainant if SCCS believes the witness is not likely to possess relevant information, is not likely to lead SCCS to the discovery of relevant information, or the information the witness is likely to possess is cumulative of other information gathered by SCCS. SCCS may re-interview the Complainant, the Respondent, and/or any other person at any time during the investigation in order to obtain additional and/or clarifying information. Investigations conducted by SCCS will be prompt, thorough, and equitable. In conducting an investigation, SCCS will act as a fair and impartial party rather than a representative of the person, office, unit, organization, or entity that submitted the allegations to SCCS. Parts of SCCS's investigation may occur before, during, and/or after the Educational Conference (Section .06(6)) and/or any other part of the student conduct process. At the conclusion of its investigation, SCCS may prepare a written report of the findings of the investigation. The report may include an assessment of the credibility of persons interviewed during the investigation and an assessment of whether it is more likely than not that the Respondent violated the Standards of Conduct. SCCS may delegate the investigation of certain types of allegations to other University offices in accordance with University policy (e.g., research misconduct; sexual misconduct, relationship violence, stalking, and retaliation).
  
- (3) Fairness and Impartiality Conflicts of Interest.
  - (a) The student conduct process must be carried out in a manner that is free from conflicts of interest consistent with due process of law.
  
  - (b) A University employee shall not act on behalf of SCCS in the student conduct process in any case in which: (1) the employee is a Complainant or a witness; or (2) the employee determines, for any other reason (e.g., personal prejudice or bias), that he/she cannot be fair or impartial.
  
  - (c) In cases involving allegations of sexual assault, dating violence, domestic violence, or stalking, the student conduct process must include protections for the Respondent analogous to, and no less protective than, the conflict of interest provisions of Tennessee Code Annotated § 4-5-303. Notwithstanding the preceding sentence: (1) an attorney for the University is allowed to provide legal advice to multiple University employees who serve in different roles in the

process of disciplining a student; and (2) the University is allowed to provide the Complainant with equivalent rights as the Respondent during the student conduct process.

(3)(4) Interim Administrative Actions.

- (a) General. In certain situations, the University may impose interim administrative actions prior to the conclusion of the student conduct process. The University shall determine the appropriate interim administrative actions based on the totality of the circumstances. Examples of interim administrative actions include, without limitation, a no-contact directive (Section .06(4)(b)), a disciplinary hold (Section .06(4)(c)), and interim restrictions (Section .06(4)(d)).
- (b) No-Contact Directive. In cases involving allegations of assault, injury, sexual misconduct, relationship violence, stalking, retaliation or in other cases where there is reason to believe continued contact between a student and specific persons may interfere with those persons' security, safety or ability to participate effectively in work or studies, the University may issue a written instruction to a student, called a no-contact directive, that prohibits a student from having verbal, physical, written, and/or electronic contact with specific other persons for a definite or indefinite period of time. A no-contact directive also may prohibit a student from being present on designated University-controlled property. Any student, faculty or staff member or other person with a reasonable justification may request that a no-contact directive be issued to a student.
- (c) Disciplinary Hold. The Respondent's academic record (including, without limitation, the release of the Respondent's official or unofficial transcript), degree, ability to register for classes, and/or ability to re-enroll may be placed on disciplinary hold by SCCS or by another appropriate University office at the request of SCCS for the following reasons: (1) to require the Respondent to participate in the student conduct process (SCCS will release the hold after the Respondent attends the Educational Conference but may reinstate the hold in order to require the Respondent to participate in other parts of the student conduct process); or (2) to require the Respondent to satisfy the terms and conditions of disciplinary sanctions received (the hold shall be released after the terms and conditions have been satisfied). No diploma shall be given and no grades, academic credit, or degree shall be awarded to a student who has been placed on disciplinary hold.
- (d) Interim Restrictions. Generally, the status of a student alleged to have violated the Standards of Conduct is not affected until the conclusion of the student conduct process (Section .07(4)). However, the Vice Chancellor for Student Life may impose interim restrictions prior to the conclusion of the student conduct process related to the alleged misconduct when the Vice Chancellor for Student Life has reasonable cause to believe that (1) a Respondent's continued presence on University-controlled property or at University-affiliated activities poses a significant risk of substantial harm to the health, safety, or welfare of others or to property or (2) poses an imminent or ongoing threat to the disruption of, or interference with, the normal operations of the University. Interim restrictions shall be confirmed by notice to the Respondent that explains the basis for the interim restrictions and shall remain in effect until the conclusion of the student conduct process, which should be completed without undue delay. Within three (3) days of the imposition of the interim restrictions, the Respondent shall be

offered an opportunity to appear before the Vice Chancellor for Student Life in order to discuss the following issues only: (1) the reliability of the information concerning the Respondent's conduct; and (2) whether the conduct and surrounding circumstances reasonably indicate that the Respondent's continued presence on University controlled property or at University-affiliated activities poses a significant risk of substantial harm to the health, safety, or welfare of others or to property or poses an imminent or ongoing threat of disruption or interference with the normal operations of the University. Examples of interim restrictions include, without limitation, restricting the student's privileges to participate in University affiliated activities, restricting the student's privileges to access University-controlled property, University owned housing removal and/or reassignment, and/or interim suspension. Restrictions contained within no-contact directives (Section .06(4)(b)) are not interim restrictions. An interim suspension is an official separation of the student from the University until the conclusion of the student conduct process or the interim suspension is lifted, whichever occurs first. While on interim suspension, the student loses all University rights and privileges (e.g., enrollment privileges) except for the rights and privileges to contest the allegations pursuant to the Code, shall not represent the University in any official manner, and shall not be present on University-controlled property or participate in University-affiliated activities without the prior approval of the Vice Chancellor for Student Life. When placed on interim suspension, the Respondent may be assigned a grade of "W" or "I," whichever is deemed appropriate by the faculty member involved. A Respondent who violates the terms of an interim restriction shall be subject to further disciplinary action and may be treated as a trespasser.

~~(4)~~(5) Coursework. Coursework performed during the student conduct process shall be considered conditional. Credit for such coursework may be affected, delayed, denied, and/or revoked based on a final finding of misconduct and/or a sanction imposed under the Code. In addition, subject to the other provisions of the Code, a delay in the granting of a degree may be imposed and/or a degree that was awarded prior to a final decision under the Code may be revoked.

~~(5)~~(6) Educational Conference.

- (a) Scope of the Educational Conference. The Educational Conference is a meeting between SCCS and the Respondent in which the following generally occurs:
1. SCCS orally informs the Respondent about the allegations made against the Respondent and, if requested by the Respondent, provides the Respondent with a reasonable opportunity to review the written allegations, if any, received by SCCS.
  2. SCCS provides the Respondent with an opportunity to respond to the allegations, including, without limitation, an opportunity to present information to SCCS concerning the allegations and identify witnesses whom the Respondent believes SCCS should interview to obtain additional information.
  3. Both SCCS and the Respondent may ask questions to each other and seek clarifying information about the allegations, the possible sanction(s), and the student conduct process.

4. Based on information provided by the Respondent during the Educational Conference, SCCS may issue a no-action determination (Section .07(4)(a)) or continue its investigation in order to determine whether it is more likely than not that the Respondent violated the Standards of Conduct.

(b) Notice of Educational Conference. A Notice of Educational Conference is a written notice through which SCCS notifies the Respondent that SCCS has received allegations that the Respondent has engaged in misconduct; instructs the Respondent to attend or schedule an Educational Conference; and provides the Respondent with other information about the student conduct process. A Notice of Educational Conference generally will include the following information: (1) notice that SCCS has begun or will begin an investigation of allegations SCCS received concerning the Respondent's conduct; (2) notice of a disciplinary hold, if any, that the University has implemented or will implement with respect to the Respondent; (3) a brief description of the Respondent's alleged conduct; (4) a preliminary list of potential violations of the Standards of Conduct, based on the Respondent's alleged conduct; (5) notice of the Respondent's right to be assisted and/or supported by an Advisor throughout the student conduct process, in accordance with Section .05(3) including information about the role of an Advisor; (6) the internet address where the Respondent can review a copy of the Code; (7) a date, time, and place for an Educational Conference with SCCS to discuss the incident, or, in the alternative, an instruction that the Respondent contact SCCS to schedule an Educational Conference within the time frame designated in the Notice of Educational Conference; and (8) notice of the consequences of failing to comply with SCCS's instruction to attend or schedule an Educational Conference.

(c) Consequences of Failing to Attend or Schedule an Educational Conference. If the Respondent fails to attend or schedule an Educational Conference after SCCS has sent the Respondent a Notice of Educational Conference, then the Respondent waives all rights to a Formal Hearing, and SCCS has the discretion to deem the Respondent to have accepted SCCS's determination of responsibility for misconduct and may impose appropriate sanction(s) for the misconduct (unless the Respondent's absence is excused by SCCS for good cause). SCCS also may determine that the Respondent's failure to attend the Educational Conference constitutes a separate violation of the Standards of Conduct.

~~(6)~~(7) Notice of Allegations. A Notice of Allegations is a written notice that informs the Respondent that SCCS has concluded that it is more likely than not that the Respondent violated the Standards of Conduct. A Notice of Allegations generally includes, without limitation, the following information: (i) a brief summary of the facts of Respondent's alleged misconduct; (ii) notice that SCCS has determined that it is more likely than not that Respondent violated the Standards of Conduct; (iii) notice of the specific Standard(s) of Conduct that SCCS has determined the Respondent more likely than not violated; (iv) the Respondent's option(s) to elect a Formal Hearing to contest SCCS's determination of responsibility for misconduct and/or the sanction(s); and (v) the names of witnesses likely to present information concerning the alleged misconduct if the Respondent elects to contest the allegations through a Formal Hearing. SCCS may provide the Respondent with a Notice of Allegations during the Educational Conference.

## 1720-04-03-.07 STUDENT CONDUCT PROCESS: RESOLUTIONS.

- (1) Resolution by Agreement.
  - (a) Purpose and Effects of a Resolution Agreement. At any time during the student conduct process, a Respondent may resolve allegations of misconduct by signing a Resolution Agreement proposed by SCCS. By signing a Resolution Agreement, the Respondent: (1) accepts responsibility for violating the Standards of Conduct ~~as alleged by SCCS~~; (2) agrees to the imposition of the sanction(s) ~~proposed by SCCS~~; and (3) waives all rights the Respondent may have to resolve the allegations through a Formal Hearing. A Resolution Agreement is not valid until it is signed by both the Respondent and SCCS.
  - (b) Revocation or Appeal of a Resolution Agreement. The Respondent may not revoke or appeal a Resolution Agreement signed by the Respondent.
  - (c) Resolution Agreement - Sexual Misconduct, Relationship Violence, Stalking, or Retaliation. ~~After SCCS receives a Resolution Agreement signed by the Respondent in a case involving sexual misconduct, relationship violence, stalking, or retaliation, SCCS will notify the Complainant about the proposed Resolution Agreement in writing and provide the Complainant with the opportunity to object to the sanction proposed by SCCS in the Resolution Agreement. A Complainant must notify SCCS of his/her objection in writing within five (5) business days from the date that SCCS informs the Complainant about the proposed Resolution Agreement. If the Complainant timely informs SCCS of his/her objection, then SCCS may address the Complainant's objection by modifying the sanction in a way proposed Resolution Agreement that is agreeable to both the Respondent and the Complainant and having the Respondent sign the modified Resolution Agreement. Otherwise, SCCS will continue the student conduct process and resolve the allegations against the Respondent in accordance with the Code. Nothing in this Section .07(1) shall be construed to permit SCCS to conduct mediation in a case involving allegations of sexual assault.~~
  - (d) Resolution Agreement – Academic Dishonesty. In order to resolve an allegation that the Respondent violated Section .04(1) (academic dishonesty) through a Resolution Agreement, the Respondent shall agree to the imposition of the instructor's academic penalty in addition to agreeing to the other requirements contained in Section .07(1)(a).
- (2) Resolution by Formal Hearing.
  - (a) Types of Formal Hearings. A Formal Hearing is a process through which a Respondent has a right to contest allegations of misconduct and/or the sanctions proposed by SCCS by presenting information (including, without limitation, witnesses) to a decision maker other than the University employee(s) who conducted the investigation and/or Educational Conference. The Code provides for three types of Formal Hearings, depending on the gravity of the disciplinary sanctions that have been proposed by SCCS:
    1. A hearing before a Student Life Hearing Officer, which is described in Section .07(2)(d);

2. A hearing before the SCB ("SCB Hearing"), which is described in Section .08; and
  3. A contested case hearing under the Uniform Administrative Procedures Act ("UAPA Hearing"), which is conducted in accordance with the University's procedures for conducting contested case proceedings under the UAPA, Chapter 1720-01-05.
- (b) Rights to a Formal Hearing. In every case, the Respondent has the right to resolve allegations of misconduct and/or proposed sanctions through a hearing before a Student Life Hearing Officer. A Respondent also has the right to resolve allegations of misconduct and/or the proposed sanctions through a SCB Hearing or a UAPA Hearing when SCCS proposes one (1) or more of the following sanctions: (1) deferred suspension; (2) suspension; (3) expulsion; (4) University housing removal; (5) withholding of degree; (6) revocation of degree; or (7) revocation or suspension of the student organization's University registration.
  - (c) How to Request a Formal Hearing. A Formal Hearing may be requested by the Respondent only in writing using the form(s) approved by SCCS. Orally requesting a Formal Hearing shall not constitute a valid request for a Formal Hearing. If a Respondent timely requests a Formal Hearing and has a right to have either a UAPA Hearing or a SCB Hearing, then the University will conduct a UAPA Hearing unless the Respondent executes a written waiver of the right to a UAPA Hearing.
  - (d) Hearing before a Student Life Hearing Officer. A Student Life Hearing Officer is a University employee designated and trained by SCCS to conduct a Formal Hearing consistently with the procedures outlined in the Code for SCB Hearings (e.g., Section .08), except as provided in this Section .07(2)(d). In conducting a Formal Hearing, a Student Life Hearing Officer has the same authority of the Chairperson of the SCB except that, unlike the Chairperson of the SCB, but like the voting members of the SCB, the Student Life Hearing Officer is the decision maker concerning whether the Respondent violated the Standards of Conduct, and, if so, what sanction(s) to impose. The decision of a Student Life Hearing Officer may be appealed to the Appellate Board using procedures consistent with the procedures outlined in the Code for appeals of decisions of the SCB.
  - (e) Consequences of Failing to Timely Elect a Formal Hearing. If the Respondent fails to elect a Formal Hearing within five (5) business days of SCCS transmitting a Notice of Allegations in writing to the Respondent, then the Respondent waives all rights to a Formal Hearing, and SCCS has the discretion to deem the Respondent to have accepted SCCS's determination of responsibility for misconduct and may impose sanction(s) deemed appropriate by SCCS (unless SCCS extends the time for the Respondent to request a Formal Hearing for good cause). If SCCS extends the time for the Respondent to request a Formal Hearing and the Respondent fails to elect a Formal Hearing within the additional time granted by SCCS, then the Respondent waives all rights to a Formal Hearing, and SCCS has the discretion to deem the Respondent to have accepted SCCS's determination of responsibility for misconduct and may impose sanction(s) deemed appropriate by SCCS.
- (3) Resolution through an Alternative Resolution Process.

(a) ~~Proposal of an Alternative Resolution Process. At any time during the student conduct process, SCCS may propose to the Respondent and the Complainant that they attempt to resolve the allegations against the Respondent may be resolved through an alternative resolution process. An alternative resolution is a resolution that is reached through a process and/or by a sanction or restriction not described in the Code. Before proposing that the allegations be resolved through an alternative resolution process, SCCS shall determine whether an alternative resolution process would be an appropriate method of resolution based on the facts and circumstances of the case, and, if so, what type of alternative resolution process should be used. In cases involving sexual misconduct, relationship violence, stalking, or retaliation, SCCS will consult with the Title IX Coordinator in making that determination. Examples of alternative resolution processes that may be proposed by SCCS include but are not limited to mediation, facilitated dialogue, conflict coaching, and restorative justice. An~~ The process of trying to reach an alternative resolution process is a voluntary process (i.e., neither the Respondent nor a Complainant is required to participate) that may or may not result in an Alternative Resolution Agreement. If an Alternative Resolution Agreement is not reached, then the student conduct process will proceed, and the allegations against the Respondent will be resolved through one of the other resolution methods in the Code.

~~(b) Unavailability of an Alternative Resolution Process. SCCS shall not use an alternative resolution process to resolve allegations against a Respondent: (1) in a case in which the Complainant and the Respondent have not mutually agreed, in writing, to the alternative resolution process; or (2) in a case involving allegations of sexual assault (restriction limited to mediation only).~~

~~(c)(b) Alternative Resolution Agreement. An Alternative Resolution Agreement is a written agreement that confirms an agreement reached during an alternative resolution process to resolve the allegations against the Respondent through an alternative resolution. To be valid, an Alternative Resolution Agreement shall in all cases be signed by SCCS and the Respondent, and the Complainant and shall include a waiver of the Respondent's right, if any, to have a Formal Hearing on the allegations. Prior to the execution of an Alternative Resolution Agreement, if a Complainant has not participated with SCCS in the discussion of an alternative resolution, then SCCS will provide the Complainant with an opportunity to provide a timely objection to the proposed alternative resolution. In appropriate cases, SCCS may request the Complainant to sign an Alternative Resolution Agreement and determine that the Alternative Resolution Agreement is not effective without the Complainant's signature. Neither the Respondent nor the Complainant may revoke or appeal an Alternative Resolution Agreement.~~

(4) **Conclusion of the Student Conduct Process.** This Section .07(4) summarizes the different ways in which the student conduct process may be concluded. If more than one of the following events occur, then the student conduct process concludes on the date of the last event to occur. SCCS generally will provide the Respondent with written notice about the conclusion of the student conduct process within a reasonable time after the conclusion of the process. If permitted or required by law, SCCS also will provide the Complainant with written notice about the conclusion of the student conduct process within a reasonable time after the conclusion of the process.

(a) **No Action Determination.** The student conduct process concludes when SCCS makes a final determination at any point in the process that no action will be

taken (e.g., SCCS determines that it is not more likely than not that the Respondent violated the Standards of Conduct; a Complainant declines to participate in the student conduct process, and SCCS does not have sufficient information or witnesses to move forward with the student conduct process). SCCS may reinstate the student conduct process upon receipt of new information; however, after SCCS has determined to take no action, SCCS may reinstate the student conduct process after a student has graduated only in cases involving Section 4.1 (academic dishonesty) or a violation of the University's policy on research misconduct. A Complainant who is informed by SCCS of a no action determination may appeal the decision to the SCCS, in writing, within five (5) business days of the date that SCCS transmitted notice of the no action determination to the Complainant. The decision of SCCS is final and may not be appealed.

- (b) Failure to Attend or Schedule an Educational Conference. In accordance with Section .06(6)(c), the student conduct process concludes when: SCCS has issued a Notice of Educational Conference; the Respondent either fails to attend an Educational Conference or fails to comply with SCCS's instruction to contact SCCS to schedule an Educational Conference within the time frame designated in the Notice of Inquiry; and SCCS does not exercise its discretion to excuse the Respondent's failure for good cause.
- (c) Failure to Request a Formal Hearing after Notice of Allegations. In accordance with Section .07(2)(e), the student conduct process concludes when the Respondent fails to elect a Formal Hearing within five (5) business days of SCCS sending or delivering a Notice of Allegations to the Respondent, and SCCS does not exercise its discretion to excuse the Respondent's failure for good cause.
- (d) Resolution Agreement. The student conduct process concludes when a Resolution Agreement is executed in accordance with Section .07(1).
- (e) Alternative Resolution Agreement. The student conduct process concludes when an Alternative Resolution Agreement is executed in accordance with Section .07(3).
- (f) Notice of Decision of a Student Life Hearing Officer – No Valid Appeal. The student conduct process concludes when a Student Life Hearing Officer has issued a Notice of Decision and neither the Respondent nor the Complainant has submitted a valid Notice of Appeal.
- (g) Notice of Decision of a Student Conduct Board – No Valid Appeal. The student conduct process concludes when a Student Conduct Board has issued and transmitted a Notice of Decision under Section .08(5) and neither the Respondent nor the Complainant has submitted a valid Notice of Appeal under Section .08(6).
- (h) Notice of Final Decision. The student conduct process concludes when the Appellate Board has issued a Notice of Final Decision.
- (i) UAPA. The student conduct process concludes when a Formal Hearing has concluded, either through a final order, settlement, or otherwise, under the University's rules for conducting contested case proceedings under the UAPA, Chapter 1720-01-05.

- (j) Expiration and Satisfaction of All Sanctions. The student conduct process concludes when SCCS determines that the time periods for all sanctions given to the Respondent have expired (except for the sanction of expulsion, which does not expire), and the Respondent has satisfied all other terms and conditions of all sanctions that the Respondent received.

**1720-04-03-.08 STUDENT CONDUCT BOARD: HEARINGS AND APPEALS.**

- (1) Notice of SCB Hearing.
  - (a) When a Notice of SCB Hearing is Sent. If the Respondent requests a SCB Hearing in accordance with Section .07(2), then SCCS will send the Respondent and the Complainant a Notice of SCB Hearing at least seven (7) business days in advance of the date of the hearing.
  - (b) Information in the Notice of SCB Hearing. The Notice of SCB Hearing generally will contain, or be accompanied by, the following information: (1) the date, time, and place of the SCB Hearing (SCCS may reschedule the SCB Hearing for good cause and issue a revised Notice of SCB Hearing that contains a new date, time, and place of the SCB Hearing); (2) a copy of the Notice of Allegations; (3) the sanction(s) that the Conduct Officer will request the SCB impose on the Respondent; (4) the names of all witnesses through whom the Conduct Officer is likely to present information during the SCB Hearing; (5) a notice of the right to the assistance and/or support of an Advisor during the SCB Hearing; and (6) a description of all tangible or electronic information that the Conduct Officer is likely to present to the SCB, such as an investigative report, police report, incident report, witness statements, video or audio recordings, photographs, text messages, or phone records; (7) notice of the right to request a copy of SCCS' investigative file, redacted in accordance with the Family Educational Rights and Privacy Act of 1974, (20 U.S.C. § 1232g), and the federal regulations implementing that statute, as amended; and (8) notice of the right to request copies of all documents, copies of all electronically stored information, and access to tangible evidence that the University has in its possession, custody, or control and may use to support claims or defenses, unless the use would be solely for impeachment.
  - (c) More than One Respondent. In cases involving more than one (1) Respondent, SCB Hearings concerning each Respondent's conduct may be conducted separately upon written request of a Respondent submitted at the time of the Respondent's request for a Formal Hearing. SCCS has the discretion to make the final determination of whether to grant such a request and will notify the Respondents of the decision.
  - (d) Consequences of Failing to Attend a SCB Hearing. If the Respondent fails to attend a SCB Hearing, then the Respondent waives all rights to a SCB Hearing. The SCB may: proceed with the SCB Hearing without the Respondent's participation; hold the Respondent accountable for all decisions made in the Respondent's absence, including, without limitation, decisions concerning responsibility for alleged violations of the Standards of Conduct; and may determine that the Respondent's failure to attend the hearing constitutes a separate violation of the Standards of Conduct. If the SCB determines, in the Respondent's absence, that it is more likely than not that the Respondent

violated the Standards of Conduct, then SCCS may implement the sanctions imposed by the SCB and conclude the student conduct process.

- (2) Composition of the Student Conduct Board.
  - (a) Eligible Pool. The University shall annually appoint a pool of persons who are eligible to serve on a SCB. The University may appoint University students, University faculty members, or University staff employees; however, an employee who works in SCCS is ineligible to serve on a SCB. Persons appointed by the University will be trained by SCCS to serve on a SCB.
  - (b) Appointment of the SCB.
    - 1. General. The SCB is appointed ad hoc for each hearing by the Director of SCCS from the pool described in Section .08(2)(a). SCCS shall appoint a SCB consisting of one (1) non-voting Chairperson and seven (7) voting members. SCCS shall not appoint persons on the basis of how SCCS anticipates that they will vote. The Chairperson shall be a University faculty member or staff employee who has received training from SCCS on how to conduct a SCB Hearing. Five (5) voting members and one (1) non-voting Chairperson constitute a quorum of the SCB that was appointed by SCCS; however, SCCS will make reasonable efforts to seat a SCB consisting of seven (7) voting members. In seating any SCB, except as provided in Section .08(2)(b)(2) or Section .08(2)(b)(3), the student composition of the voting members of the SCB must be equal to or greater than the sum of the faculty and staff voting members. Regardless of the number of voting members present, all classifications of the University community (students, faculty, and staff) must be represented by at least one (1) voting member, except as provided in Section .08(2)(b)(2) or Section .08(2)(b)(3).
    - 2. Exception for Cases Involving Allegations of Sexual Misconduct. Notwithstanding anything to the contrary in Section .08(2)(b)(a), SCCS shall not appoint students to serve on the SCB in a case involving an allegation of sexual misconduct unless both the Respondent and the Complainant consent to having students appointed to serve on the SCB hearing their case.
    - 3. Exception for Cases Involving Allegations of Research Misconduct. Notwithstanding anything to the contrary in Section .08(2)(b)(a), SCCS shall not appoint students to serve on the SCB in a case involving an allegation of research misconduct.
  - (c) Fairness and Impartiality of SCB Members. Any member of the SCB who determines that they cannot decide a case fairly and impartially for any reason (e.g., having a personal prejudice or bias) shall excuse themselves from serving on the SCB, in which case SCCS shall appoint a substitute member of the panel in accordance with the rules in Section .08(2)(b).
- (3) General Rules Governing SCB Hearings.
  - (a) Required Pre-Hearing Information and Copies – Complainant and Respondent.

1. At least five (5) business days prior to the SCB Hearing, the Complainant and the Respondent must provide the following to SCCS in writing:
  - (i) The name of their Advisor, if any, who will attend the SCB Hearing;
  - (ii) The names of all witnesses through whom they plan to present information to the SCB and a brief summary of the information that they reasonably anticipate that each witness will provide to the SCB;
  - (iii) A copy of all tangible or electronic information that they plan to present to the SCB (e.g., witness statements, video or audio recordings, photographs, text messages, phone records, medical bills, diagrams). However, they are not required to provide copies of information that is not in a form that allows copying (e.g., weapon; piece of clothing), in which case they should describe the information in writing; and
  - (iv) A copy of a statement, if any, that they want the SCB to consider in determining the appropriate sanction to impose on the Respondent if the SCB finds that the Respondent violated a Standard of Conduct. The Complainant's statement may include a description of the impact of the Respondent's alleged conduct on the Complainant. The Respondent's statement may include a description of any factors the Respondent believes mitigates the alleged misconduct.
2. During the SCB Hearing, the Complainant and the Respondent may present witnesses who were not identified in the Notice of Formal Hearing only if they comply with this Section .08(3)(a) (i.e., other witnesses not identified to SCCS in writing at least five (5) business days prior to the SCB Hearing will not be allowed). The Complainant and the Respondent are responsible for contacting witnesses who were not identified in the Notice of Formal Hearing, informing them about the date, time, and place of the SCB Hearing, and securing their attendance at the SCB Hearing.
  - (b) Pre-Hearing Review of Information. Individuals involved with the hearing are responsible for contacting SCCS to arrange a time to review the information prior to the hearing if such review is desired and the information has not been made available electronically. No less than three (3) business days prior to the hearing, SCCS will make copies of information submitted by the Complainant, the Respondent, and the Conduct Officer available for review by the Complainant, Respondent, their respective Advisors, and members of the SCB. Those individuals will be notified by SCCS when materials are available for review. SCCS may make the information available electronically. In their sole discretion, SCCS may redact irrelevant information prior to making information available.
  - (c) Recording of the SCB Hearing. The University shall be responsible for making a verbatim record (e.g., digital recording) of a SCB Hearing. Deliberations of the SCB shall not be recorded. The record of the SCB Hearing shall be the property

of the University. The Complainant and the Respondent may take notes during a SCB Hearing, which shall be their own property, but neither the Complainant nor the Respondent may record the hearing using any other method of recording. However, the University will provide a copy of the verbatim record to the Complainant and the Respondent upon request.

- (d) Attendance and Participation. Attendance during a SCB generally is limited to members of the SCB, the Conduct Officer, the Complainant and the Complainant's Advisor, the Respondent and the Respondent's Advisor, and witnesses. The Conduct Officer, the Complainant, the Respondent, Advisors, and witnesses may not be present during the deliberations of the SCB. Witnesses may attend the SCB Hearing only while they are presenting information to the SCB, unless the witness is the Complainant or the Respondent. The Chairperson and SCCS have the discretion to allow other persons to attend the SCB Hearing, in accordance with state and federal law. The Complainant and the Complainant's Advisor may attend any part of the SCB Hearing (excluding the deliberations of the SCB), but the Complainant and the Complainant's Advisor shall be excused from the hearing room when the Respondent's Education Records or information obtained from the Respondent's Education Records are disclosed unless the information is also part of the Complainant's Education Records. However, the previous sentence shall not apply, and the Complainant and the Complainant's Advisor shall have the right to attend the entire SCB Hearing, in cases of sexual misconduct, relationship violence, and stalking. The Chairperson may accommodate concerns for the personal safety, well-being, and/or fears of confrontations of the Complainant, the Respondent, and/or witnesses by permitting attendance or participation by closed circuit television, video conferencing, or other appropriate means, as determined in the discretion of the Chairperson. However, the identity of all persons who present information to the SCB must be made known to the Respondent and the Complainant. The Respondent and the Complainant must be allowed to view and hear a person who is attending or participating by closed circuit television, video conferencing, or other similar means.

(4) Procedural Rules for SCB Hearings.

- (a) Right to Challenge the Selection of a SCB Member. At the beginning of the SCB Hearing, the Chairperson shall allow the Complainant and the Respondent to request the removal of a member of the SCB on the grounds that the person cannot be fair and impartial in deciding the case. If the Chairperson determines that the person cannot be fair and impartial, then SCCS may appoint a substitute member of the SCB in accordance with Section .08(2)(b) or, if a quorum of the SCB still exists, remove the SCB member and allow the SCB Hearing to continue without appointing a substitute member.
- (b) Authority of the Chairperson. The Chairperson has the authority to maintain order and make all decisions necessary for the fair, orderly, and expeditious conduct of the SCB Hearing. The Chairperson shall be the final decision maker concerning what, how, and in what order information and witnesses are presented to the SCB.
- (c) Exclusion of Information. Upon the Chairperson's initiation or upon request by the Conduct Officer, the Complainant, the Respondent, or a member of the SCB, the Chairperson may exclude the following information from the SCB's consideration:

(1) irrelevant information; (2) information that unreasonably repeats information already provided to the SCB; (3) information that was not provided in advance of the hearing in accordance with Section .08(3)(a), or information from witnesses who were not disclosed in advance of the hearing in accordance with Section .08(3)(a); (4) information that is protected from disclosure under federal or Tennessee law; and/or (5) information about a person's character or character trait, if the information is being presented to show that on a particular occasion the person acted in accordance with the character or character trait. Generally, in cases involving an allegation of sexual misconduct, neither the Complainant's nor the Respondent's prior sexual history is relevant to the issue of whether sexual misconduct occurred and will not be considered by the SCB. However, when the Respondent contends that the Complainant gave consent for a particular sexual act, the prior sexual history between the Complainant and the Respondent may be relevant to assess the manner and nature of communications between the parties, although the mere existence of a current or previous dating, romantic, intimate, or sexual relationship with the other person does not allow a Respondent to imply or infer consent. The Complainant's and the Respondent's prior sexual history may also be relevant in other limited circumstances, such as to show intent, motive, absence of mistake, or to explain an injury or physical finding.

- (d) **Persons Who May Present Information.** The only persons who may present information and/or witnesses during a SCB Hearing are the Conduct Officer, the Complainant, and the Respondent. The Complainant and the Respondent are responsible for presenting their own information and/or witnesses, if any, to the SCB (an Advisor shall not present information and/or witnesses to the SCB).
- (e) **Formal Rules.** Formal rules of process, procedure, and/or technical rules of evidence, such as those applied in criminal or civil court, are not used in SCB Hearings. The Chairperson shall decide all procedural questions that arise during a SCB Hearing. The Chairperson may consult with SCCS for assistance in resolving procedural questions fairly and in accordance with the Code.
- (f) **Questioning of Witnesses.** Witnesses will provide information to the SCB and answer questions from the Chairperson. The Chairperson may ask questions and/or submit a request for additional information to the Respondent, the Complainant, the Conduct Officer, and/or witnesses. The Conduct Officer, the Respondent and/or the Complainant shall not directly ask questions to each other or other witnesses. The Conduct Officer, the Respondent, the Complainant, and/or members of the SCB may propose questions for the Chairperson to ask witnesses by submitting the proposed questions to the Chairperson in writing during the hearing. The Chairperson has the discretion whether to ask a witness a question proposed by the Conduct Officer, the Respondent, the Complainant, and/or members of the SCB. The method of questioning witnesses outlined in this Section .08(4)(f) is used to preserve the educational tone of the SCB Hearing and to avoid the creation of an adversarial environment.
- (g) **Closing Statements.** At the close of the SCB Hearing, the Chairperson may allow the Conduct Officer, the Complainant, and the Respondent equal opportunities to make statements to the SCB summarizing the information presented to the SCB and/or advocating the decision that the SCB should reach. The Conduct Officer and the Complainant may advocate that the SCB impose a specific sanction(s), and the Respondent may respond; however, the Respondent's record of student

conduct maintained by SCCS shall not be disclosed to the SCB by the Conduct Officer or the Complainant during the hearing except in accordance with Section .08(5)(c).

- (h) Burden of Presenting Information Demonstrating Misconduct. The Conduct Officer bears the burden of presenting information demonstrating that it is more likely than not that the Respondent violated a Standard of Conduct, as alleged in the Notice of Allegations. Neither the Complainant nor the Respondent is required to present information or witnesses concerning the Respondent's alleged misconduct. The SCB shall not draw an inference adverse to the Conduct Officer, the Complainant, or the Respondent if the Complainant or the Respondent chooses not to present information or witnesses to the SCB.
- (5) Notice of Decision of the Student Conduct Board.
- (a) Deliberation of the SCB. After the Chairperson determines that all relevant information has been received by the SCB, the SCB will deliberate in private and decide, for each Standard of Conduct alleged in the Notice of Allegations to have been violated, whether it is more likely than not that the Respondent violated the Standard of Conduct. The SCB will decide by majority vote whether the Respondent violated the Standards of Conduct. The Chairperson shall not vote on the decision of whether the Respondent is responsible for violating the Standards of Conduct or what sanctions should be imposed unless there is a tie vote of the SCB.
  - (b) Basis of Decision. The SCB shall not base its decision on information not presented during the SCB Hearing. However, if the SCB requests that additional information be provided after the SCB Hearing, the SCB may consider and base its decision on the additional information, as long as the Conduct Officer, the Respondent, and the Complainant have had a chance to review and respond to the additional information either in a resumption of the SCB Hearing or in writing.
  - (c) Determination of Sanction(s). If the SCB decides that the Respondent violated the Standards of Conduct, then the SCB will decide the appropriate sanction(s) by majority vote. In deciding the appropriate sanctions for a Respondent's misconduct, the SCB may consider: (1) statements submitted by the Complainant and/or the Respondent to the SCB concerning the appropriate sanctions; and (2) a statement about the Respondent's conduct history, which shall be provided to the Chairperson by SCCS in a sealed envelope prior to the SCB Hearing.
  - (d) Issuance of Notice of Decision. Issuance of Notice of Decision. Within three (3) business days of the conclusion of the SCB Hearing, the Chairperson shall issue a Notice of Decision and transmit a copy of the Notice of Decision to SCCS. SCCS shall notify the Respondent about the Notice of Decision and provide a copy of the Notice of Decision. If permitted or required under law, SCCS shall notify the Complainant about the Notice of Decision (simultaneously with the notification to the Respondent) and provide a copy of the Notice of Decision to the Complainant.
  - (e) Information in Notice of Decision. The following information shall be included in the Notice of Decision: (1) for each Standard of Conduct identified in the Notice of Allegations, the SCB's decision concerning whether it is more likely than not

that the Respondent violated the Standard of Conduct and the SCB's rationale for the decision concerning the alleged violation of the Standard of Conduct, including, without limitation, a brief summary of the information upon which the SCB relied in making its decision; (2) the sanction(s), if any, that the SCB has imposed on the Respondent; and (3) information about the Respondent's and the Complainant's options, if any, to appeal the decision of the SCB.

- (6) Appealing Decisions of the Student Conduct Board.
- (a) **Appealable Decisions.** The Conduct Officer, the Complainant and/or the Respondent may appeal the decisions of the SCB that are contained in the Notice of Decision, but the grounds for appeal are limited to those described in Section .08(6)(c).
  - (b) **Notice of Appeal.** An appeal is procedurally valid only if all of the following requirements are met: (1) an appeal shall be submitted in writing by fully completing a form approved by SCCS called a "Notice of Appeal;" (2) the Notice of Appeal shall be received by SCCS within five (5) business days of the date that SCCS transmitted the Notice of Decision; and (3) the Notice of Appeal shall not include information that is not included in the record of the SCB Hearing, except the Notice of Appeal may contain a summary of the new information described in Section .08(6)(c)(3).
  - (c) **Grounds for Appeal.** The Notice of Appeal shall explain the grounds for the appeal, which shall be limited to one (1) or more of the following grounds:
    - 1. **Clearly Unreasonable Sanction.** The sanction(s) imposed by the SCB is clearly unreasonable (i.e., has no sound basis or justification in reason).
    - 2. **Material Procedural Error.** A procedural error occurred prior to or during the SCB Hearing, and the procedural error reasonably could have had a material impact on the SCB in reaching its decision. Neither the failure of the Respondent or the Complainant to secure the attendance of an Advisor or witness nor the failure of an Advisor or witness to attend or otherwise participate in any phase of the student conduct process constitutes a material procedural error. The failure of the Respondent or the Complainant to attend the SCB Hearing does not constitute a material procedural error.
    - 3. **New Information.** New information has been discovered, the information reasonably could have had a substantial impact on the SCB in reaching its decision, and the person submitting the Notice of Appeal did not know and reasonably could not have known about the information at the time of the SCB Hearing.
    - 4. **Personal Prejudice or Bias of a SCB Member.** A SCB member had a personal prejudice or bias that precluded them from fairly and impartially hearing the case. The fact that a SCB member voted to find a Respondent responsible or not responsible for violating a Standard of Conduct does not, by itself, demonstrate that the SCB member had a personal prejudice or bias for or against the Respondent, the Complainant, or the University.

- (d) Effective Date of Sanction. The sanction(s) imposed by the SCB shall not be effective during the period in which a Notice of Appeal may be submitted, or, if a procedurally valid Notice of Appeal has been submitted (as determined by Section .08(6)(b)), until a Notice of Final Decision is issued by the Appellate Board, whichever is later. In cases in which the sanction of degree revocation is imposed, the sanction shall be presented to the Chancellor for approval before the sanction is imposed.
- (e) Appellate Board. The Appellate Board is the University body that considers appeals of decisions of the SCB, after a procedurally valid Notice of Appeal has been submitted to SCCS. SCCS will appoint a pool of persons trained by SCCS who are eligible to serve on an Appellate Board. SCCS may appoint University students, University faculty members, or University staff employees to be members of that pool. SCCS shall not appoint persons on the basis of how SCCS anticipates that they will vote.
- (f) Determination of Procedural Validity of Notice of Appeal. Within five (5) business days after the receipt of a Notice of Appeal, SCCS will determine whether the Notice of Appeal is procedurally valid. A Notice of Appeal is procedurally valid only if it has been fully completed, timely submitted to SCCS, does not contain information outside of the record of the SCB Hearing, and does not contain a ground for appeal not listed in Section .08(6)(c). If a Notice of Appeal is procedurally invalid and the time for submitting a Notice of Appeal under this Section .08(6)(f) has expired, then SCCS shall send the Conduct Officer, the Respondent, and the Complainant (if permitted or required by law) a notice that the decision of the SCB has become final and any sanction(s) imposed will become effective immediately. However, in a case in which the Notice of Appeal contains information outside of the record of the SCB Hearing or a ground for appeal not listed in Section .08(6)(c), SCCS may proceed with appointing an Appellate Board after removing from the Notice of Appeal information that was not included in the record of the SCB Hearing and/or the impermissible ground for appeal.
- (g) Appointment of Appellate Board. If the Notice of Appeal is procedurally valid, then SCCS shall appoint an Appellate Board to hear the appeal from the pool of persons who are eligible to serve on an Appellate Board. An Appellate Board shall be composed of one (1) non-voting Chairperson and three (3) voting members. At least one (1) voting member of the Appellate Board shall be a University student; except, however, SCCS shall not appoint students to serve on an Appellate Board in a case involving an allegation of research misconduct or involving an allegation of sexual misconduct unless both the Respondent and the Complainant consent to having students appointed to serve on the Appellate Board hearing their case. The Director of SCCS shall not appoint a person to serve as Chairperson or a voting member of the Appellate Board if the person served as a Chairperson or a voting member of the SCB whose decision is being appealed. In addition, an employee who works in SCCS or whose direct supervisor is the Conduct Officer who participated in the SCB Hearing shall be ineligible to serve as a member of the Appellate Board.
- (h) Transmittal of Notice of Appeal. After the appointment of the members of the Appellate Board, SCCS shall transmit a copy of the Notice of Appeal to persons who have a need to know about the Notice of Appeal, including, without limitation, the members of the Appellate Board and all non-appealing parties

(e.g., if the Respondent appeals, the Conduct Officer and the Complainant would be the non-appealing parties). A non-appealing party may submit a written response to the Notice of Appeal to the Appellate Board within three (3) business days of SCCS's transmittal of the Notice of Appeal. The written response shall be limited to: (1) responding to issues raised in the Notice of Appeal and shall not contain information that is not included in the record of the SCB Hearing; and (2) request the removal of a member of the Appellate Board on the grounds that the person cannot be fair and impartial in deciding the case. If SCCS determines that the person cannot be fair and impartial, then SCCS may appoint a substitute member of the SCB in accordance with Section .08(6)(g).

- (i) Recusal. Any member of the Appellate Board who determines that they cannot decide the appeal fairly and impartially for any reason shall recuse themselves from serving on the Appellate Board, in which case SCCS shall appoint a substitute member of the Appellate Board in accordance with this Section .08(6)(g).
- (j) Review of the Record. The Appellate Board's final decision shall be based on its review of the record of the hearing before the SCB, which shall be limited to: (1) the Notice of Allegations; (2) the Notice of Formal Hearing; (3) the Notice of Decision; (4) the recording and the transcript, if any, of the hearing, and all other information submitted to the SCB during the hearing; and (5) the Notice of Appeal and any written responses, in accordance with Section .08(6)(h).
- (k) Potential Decisions of the Appellate Board. The Appellate Board shall reach one (1) of the following decisions, by a majority vote, if the appeal is determined to be procedurally valid:
  - 1. Affirm both the SCB's finding that the Respondent violated the Standards of Conduct and the sanctions imposed by the SCB;
  - 2. In a case involving a clearly unreasonable sanction, the Appellate Board may modify the sanctions imposed by the SCB by imposing a greater or lesser sanction(s);
  - 3. In a case involving a material procedural error, the Appellate Board shall remand the case for a new hearing to be conducted by a new SCB or the same SCB. The Appellate Board should recommend to the Chairperson how to correct the procedural error. SCCS may appoint a substitute member for any member of the SCB who is unavailable to participate in the new hearing; or
  - 4. In a case of new information that fits the criteria described in Section .08(6)(c)(3), remand the case to the same SCB for the limited purpose of hearing the new information and reconsidering its decision based on the new information. SCCS may appoint a substitute member for any member of the SCB who is unavailable to participate in hearing the new information or the reconsideration of the decision.
  - 5. In a case in which a SCB member had a personal prejudice or bias, remand the case for a new hearing to be conducted by a new SCB.

- (l) Notice of Final Decision. The Appellate Board shall communicate its decision through a written notice called a Notice of Final Decision. The Notice of Final Decision should be issued within ten (10) business days of the submission of the Notice of Appeal. The Notice of Final Decision shall be sent to SCCS, who will notify the Conduct Officer, the Respondent, the Chairperson of the SCB, and, if permitted or required by law, the Complainant about the Notice of Decision and provide them with a copy of the Notice of Decision. The decision of the Appellate Board is final and is not subject to appeal.
- (7) Other Issues Heard by the SCB. In addition to hearing disputes concerning violations of the Standards of Conduct, the Student Conduct Board shall also be the University body that hears disputes concerning the interpretation of the Student Government Constitution and disputes concerning the results of Student Government elections.

#### **1720-04-03-.09 SANCTIONS.**

- (1) General Rules.
  - (a) Purposes of Sanctions. The purposes of sanctions include, without limitation: (1) to educate the Respondent about appropriate conduct; (2) to promote the personal and professional development of the Respondent; (3) to discourage the Respondent and other students from violating the Standards of Conduct; and (4) to protect other members of the University community. The sanctions imposed on a Respondent should be proportional to the Respondent's misconduct and appropriate for the particular case based on the gravity of the offense (including, without limitation, how the violation affected or reasonably could have affected other members of the University community). Consideration may also be given to the Respondent's conduct record; whether the Respondent acted in self-defense, and, if so, whether the amount of force used was reasonable under the circumstances; the Respondent's academic classification (e.g., undergraduate, graduate, freshman, sophomore, junior, senior); and other aggravating or mitigating factors.
  - (b) Administrative and Developmental Sanctions. A student who accepts responsibility or is found responsible for violating the Standards of Conduct generally will be given one (1) or more administrative sanctions. A student may also be given one (1) or more developmental sanctions.
- (2) Administrative Sanctions.
  - (a) Warning. A warning is a written notice to a student that informs the student that the student has violated the Standards of Conduct, that the misconduct must cease and/or not reoccur, and that further misconduct will likely result in the imposition of more serious sanctions.
  - (b) Disciplinary Probation. Disciplinary probation is imposed for a specified period of time during which the student may continue to be enrolled but must demonstrate conduct that conforms to the Standards of Conduct. Conditions may be placed on the student's continued enrollment. A student may be placed on disciplinary probation for moderate misconduct or in the case of repeated minor misconduct. Also, a student allowed to re-enroll following a suspension will be placed on disciplinary probation. Subsequent violations of the Standards of Conduct during

a period of disciplinary probation may result in more serious sanctions such as suspension or expulsion from the University.

- (c) **Deferred Suspension.** A deferred suspension is a designated period of time during which a student, while continuing to be enrolled, is given an opportunity to demonstrate the ability to abide by the Standards of Conduct. A student may be placed on deferred suspension for serious misconduct or in the case of repeated misconduct. If the student is found responsible for any additional violation(s) of the Standards of Conduct while the student is on deferred suspension, then the sanction of suspension will be the minimum sanction that will be imposed in a Formal Hearing on the subsequent misconduct. Students who are placed on deferred suspension generally also receive disciplinary probation and are also generally given developmental sanctions.
- (d) **Suspension.** A suspension is an official separation of a student from the University for a specific period of time and/or until certain conditions are met. A suspension may be imposed for serious misconduct and/or for a violation of deferred suspension. Suspension may include conditions that must be satisfied prior to a student being allowed to re-enroll and/or conditions that will be in place if the student is allowed to re-enroll. The effective date of a suspension may be imposed retroactively to the date that the misconduct occurred. While suspended, the student loses all University rights and privileges (e.g., enrollment privileges), shall not represent the University in any official manner, and shall not be present on University-controlled property without the prior approval of the Vice Chancellor for Student Life. The student may be required to meet with an assigned Student Life staff member periodically while suspended to ensure the student is making satisfactory progress regarding the developmental sanctions issued. The Vice Chancellor for Student Life will determine whether the student is eligible for consideration for re-enrollment by the University's admissions office(s). Students who are permitted to return to the University following a period of suspension will automatically be placed on disciplinary probation by SCCS for a designated period of time, which is designed to facilitate a smooth transition back to the University community. A student on post-suspension disciplinary probation must abide by the Standards of Conduct and all terms and conditions placed on the student's re-enrollment.
- (e) **Expulsion.** Expulsion is a sanction that permanently bars a person from re-enrolling as a student at the University. This sanction generally is imposed when the student's misconduct is deemed so serious as to warrant total and permanent disassociation from the University community without the possibility of re-enrollment; and/or when, by the student's repeated misconduct, a student has exhibited a blatant disregard for the health, safety, or welfare of other members of the University community or the University's right to establish rules of conduct. A person who has been expelled shall not be present on University-controlled property without the prior approval of the Vice Chancellor for Student Life.
- (f) **Withholding of Degree.** The University may withhold a degree as a disciplinary sanction for a specified period of time or until the student's completion of all other sanctions imposed, whichever occurs later.
- (g) **Revocation of Degree.** The sanction of the revocation of a degree may be imposed if a student has obtained a degree at least in part through cheating, plagiarism, other academic dishonesty, or through research misconduct.

Revocation of a degree shall be approved by the Chancellor before the revocation is effective. If approved by the Chancellor, this sanction will be noted on the student's academic transcript on a permanent basis.

- (h) **Disciplinary Probation for Student Organizations.** A student organization given the sanction of disciplinary probation is permitted to retain University student organization registration on a probationary status. As a condition of the disciplinary probation, the student organization also may be given developmental sanctions.
  - (i) **Social Probation for Student Organizations.** Social probation prohibits a student organization from sponsoring or participating in specified social activities. While on social probation, a student organization may not host social events or participate in University-affiliated activities. Any exceptions to social probation must be approved, in advance, by the Vice Chancellor for Student Life.
  - (j) Deferred Suspension for Student Organizations. A deferred suspension is a designated period of time during which a student organization, while continuing to be active, is given an opportunity to demonstrate the ability to abide by the Standards of Conduct. A student organization may be placed on deferred suspension for serious misconduct or in the case of repeated misconduct. If the student organization is found responsible for any additional violation(s) of the Standards of Conduct while the student organization is on deferred suspension, then the sanction of revocation or suspension of University registration will be the minimum sanction that will be imposed in a Formal Hearing on the subsequent misconduct. Student organizations who are placed on deferred suspension generally also receive disciplinary probation and developmental sanctions.
  - (k) **Revocation or Suspension of University Registration.** In cases of serious or repeated misconduct, a student organization's University registration may be suspended or revoked.
- (3) **Developmental Sanctions.** In addition to an administrative sanction(s), one (1) or more of the following developmental sanctions may be imposed in an effort to foster student learning and development.
- (a) **Educational Activities.** Educational activities are designed to educate the student about why certain conduct was inappropriate. Examples of such activities include, without limitation, offering a formal apology (in writing and/or in person); attending an educational class, training, or workshop; giving or attending a presentation; preparing and submitting a research project or paper on a designated topic; or offering a written reflection responding to a prompt given by SCCS.
  - (b) **Restitution.** Restitution is compensation for loss, damage, and/or injury incurred as a result of the student's conduct. Compensation may take the form of money, service, and/or material replacement. Restitution may be required to be made to the University, a specific individual, or a specific organization. Normally, all restitution must be paid or made within two weeks of the imposition of the sanction.

- (c) **Supervised Work/Service.** A student may be assigned unpaid work or service that is both beneficial to the University community and/or likely to assist the student in understanding the effects of the student's conduct.
- (d) **Loss or Restriction of Privileges.** Specified student privileges are lost or restricted. Such privileges include, without limitation, representing the University in any official manner, the use of or access to University-controlled property, University parking privileges, or participation in University-affiliated activities (e.g., extracurricular activities).
- (e) **University Housing Reassignment or Removal.** A student may be assigned to a different residence hall or residence hall room. A student's residence hall contract also may be terminated, and the student may be prohibited from residing in University housing for a definite or indefinite period of time.
- (f) **Mandatory Education.** A student may be required to participate in one (1) or more educational programs, classes, or workshops relating to the student's misconduct, including, without limitation, education concerning alcohol or drugs. The student may be held responsible for the payment of expenses relating to the educational program/class/workshop(s).

**1720-04-03-.10 HONOR STATEMENT.**

- (1) **Honor Statement.** An essential feature of the University is a commitment to maintaining an atmosphere of intellectual integrity and academic honesty. As such the University utilizes an Honor Statement that reads, "As a student of the University, I pledge that I will neither knowingly give nor receive any inappropriate assistance in academic work, thus affirming my own personal commitment to honor and integrity."
- (2) **Informing Students and Faculty.** The following methods will be used to inform students and faculty members about the Honor Statement: (1) the Honor Statement appears on undergraduate and graduate applications for admission, and applicants will be required to acknowledge his/her affirmation of the Honor Statement in writing; (2) information regarding the Honor Statement is included in the undergraduate and graduate catalogs, Hilltopics; (3) the Honor Statement is discussed during student orientation programs; (4) faculty members are encouraged to discuss the Honor Statement with students in entry-level English courses; (5) faculty members are encouraged to include the Honor Statement in their course syllabus; (6) implementation methods and alternatives are discussed during faculty orientation programs; and (7) the enforcement of the Honor Statement is through the Standards of Conduct (Section .04(1)) and the student conduct process.
- (3) **Academic Dishonesty.** The Honor Statement prohibits cheating, plagiarism, and any other type of academic dishonesty.
- (4) **Plagiarism.** Plagiarism is using the intellectual property or product of someone else without giving proper credit. The undocumented use of someone else's words or ideas in any medium of communication (unless such information is recognized as common knowledge) is a serious offense, subject to disciplinary action that may include failure in a course and/or dismissal from the University. Specific examples of plagiarism include, but are not limited to: (1) using without proper documentation (quotation marks and citation) written or spoken words, phrases, or sentences from any source; (2) summarizing without proper documentation (usually a citation) ideas from another source (unless such

information is recognized as common knowledge); (3) borrowing facts, statistics, graphs, pictorial representations, or phrases without acknowledging the source (unless such information is recognized as common knowledge); (4) collaborating on a graded assignment without the instructor's approval; and (5) submitting work, either in whole or partially created by a professional service or used without attribution (e.g., paper, speech, bibliography, or photograph).

- (5) **Examples of Other Types of Academic Dishonesty.** Specific examples of other types of academic dishonesty include, but are not limited to: (1) providing or receiving unauthorized information during an examination or academic assignment, or the possession and/or use of unauthorized materials during an examination or academic assignment; (2) providing or receiving unauthorized assistance in connection with laboratory work, field work, scholarship, or another academic assignment; (3) falsifying, fabricating, or misrepresenting data, laboratory results, research results, citations, or other information in connection with an academic assignment; (4) serving as, or enlisting the assistance of, a substitute for a student in the taking of an examination or the performance of an academic assignment; (5) altering grades, answers, or marks in an effort to change the earned grade or credit; (6) submitting without authorization the same assignment for credit in more than one course; (7) forging the signature of another or allowing forgery by another on any class or University-related document such as a class roll or drop/add sheet; (8) gaining an objectively unfair academic advantage by failing to observe the expressed procedures or instructions relating to an exam or academic assignment; and (9) engaging in an activity that unfairly places another student at a disadvantage, such as taking, hiding, or altering resource material, or manipulating a grading system.
- (6) **Responsibilities Associated with the Honor Statement.** All members of the University community have responsibilities associated with the Honor Statement. These responsibilities are unique to each sector of the University community. Each student is responsible for his/her own personal integrity in academic life. Each student is responsible for knowing and adhering to the terms and conditions of the Honor Statement and may acknowledge his/her adherence to the Honor Statement by writing, "Pledged," and signing on a graded class assignment or examination. Although there is no affirmative duty to report the academic dishonesty of another, each student, given the dictates of his/her own conscience, may choose to report any violation of the Honor Statement to a faculty member or to SCCS. The prevention of academic dishonesty, and the response to academic dishonesty, is the immediate responsibility of the instructor. However, students are not excused from complying with the Honor Statement because of an instructor's failure to prevent or discourage academic dishonesty.
- (7) **Academic Dishonesty – Resolution by the Academic Department.**
  - (a) **Notice of Academic Dishonesty and Informal Opportunity to Respond to Allegations.** When an act of alleged academic dishonesty is discovered by, or brought to the attention of an instructor, the instructor shall notify the student about the alleged academic dishonesty, describe the information supporting the allegation, and give the student an informal opportunity to respond to the allegation(s) and information. The instructor may proceed with imposing an academic penalty for academic dishonesty if the student has not responded to the instructor's notice to the student concerning the alleged academic dishonesty within five (5) business days of the notice. The instructor does not have the authority under the Code to impose a sanction identified in Section .09(2) or Section .09(3). An academic penalty shall not take effect until after the deadline

for an appeal has passed under Section .10(7)(c), or, if the student appeals the penalty, the student conduct process has concluded and the penalty has been upheld, whichever is later.

- (b) Decision Whether to Impose an Academic Penalty. After giving the student notice and an informal opportunity to respond, if the instructor concludes that the student engaged in academic dishonesty, then the instructor may impose an academic penalty of a failing or reduced grade in the academic exercise, assignment, examination, and/or course; loss of credit for the work involved; an assignment to repeat the work, to be graded on its merits; and/or an oral or written reprimand. An instructor may impose more than one (1) academic penalty. If the instructor decides to impose an academic penalty, then the instructor shall transmit a notice to the student of the allegations, information, findings, academic penalty imposed, and information on the student's options to appeal the findings and/or penalties under Section .10(7)(c). The notice should be countersigned by the department head. Copies of the notice to the student shall be submitted to SCCS, the dean or other chief administrative head of the instructor's academic unit, and, where different, the dean or other chief administrative head of the academic unit in which the student is enrolled. The instructor is not required to notify a student that a complaint has been made to SCCS.
  - (c) Appeals of Academic Penalties. Within five (5) business days of the transmittal of the notice to the student described in Section .10(7)(b)(2), the student may appeal the academic penalty imposed by the instructor by submitting a written Notice of Appeal of Academic Penalty to SCCS, using a form approved by SCCS. The SCB hears appeals of academic penalties. If SCCS does not issue a Notice of Allegations, then the instructor shall serve as the Conduct Officer in the SCB Hearing. The decision of the SCB, or the Appellate Board if the decision is appealed, shall be the final decision of the University concerning the academic penalty. For example, if the SCB's decision, if not appealed to the Appellate Board, is to reverse a grade of "F" for the course, then SCCS will inform the University's Registrar of the SCB's decision and request the Registrar to enter the grade for the course that the student would have received if the student had not been accused of academic dishonesty. If there is a question about what grade the student would have received if the student had not been accused of academic dishonesty, the question will be referred to the Provost for resolution.
- (8) Academic Dishonesty – Resolution through the Student Conduct Process. After receiving notice from the instructor under Section .10(7)(b), SCCS may proceed with the student conduct process and determine of whether to issue a Notice of Allegations for violating Section .04(1). A decision by SCCS not to issue a Notice of Allegations shall not be used by the student to support an appeal of an academic penalty imposed by the student's instructor. In addition, SCCS may issue a Notice of Allegations for violating Section .04(1) regardless of the response of the instructor to the alleged academic dishonesty. If an instructor alleges that a student engaged in academic dishonesty and the student wants to appeal the academic penalty and/or SCCS issues a Notice of Allegations containing an allegation of a violation of Section .04(1), then the allegations against the student and the issue of the appropriate academic penalty shall be resolved through a Resolution Agreement, a Formal Hearing, or an Alternative Resolution Process.
  - (9) College of Law. The University of Tennessee College of Law has adopted and promulgated its own Code of Academic Conduct, Chapter 1720-04-09. Chapter 1720-04-

09 shall control in the event of a conflict between this Chapter and Chapter 1720-04-09.

- (10) Research Misconduct. Notwithstanding anything in this Code to the contrary, allegations of research misconduct shall be reported, assessed, inquired into, investigated, and resolved consistently with the University's Policy on Misconduct in Research and Service.

**1720-04-03-.11 POLICY ON AMNESTY FOR INDIVIDUAL GOOD SAMARITANS AND STUDENTS IN NEED OF EMERGENCY MEDICAL ATTENTION.**

- (1) Background. The University of Tennessee holds paramount the health, safety, and welfare of students. Accordingly, all University students are expected to alert appropriate officials in the event of a health, safety, or welfare emergency, including, without limitation, a situation involving the abuse of alcohol or other drugs.
- (2) Expectations. When individual students know or reasonably should have known that other individual students are in need of emergency medical attention, the individual students are expected to: (1) contact appropriate people to report the incident and request assistance (e.g., University staff members, law enforcement), and provide those people with the names and contact information for the individual students reporting the incident and the impaired individual students; and (2) demonstrate cooperation and care by remaining with the impaired individual students and providing reasonable assistance during and after the incident. Individual students who take all of the steps described in this Section .11(2) will be referred to as a "Good Samaritan" under the Code. The individual students in need of emergency medical attention will be referred to as an "impaired individual student" under the Code.
- (3) Amnesty for Individual Good Samaritans. Unless individual Good Samaritans have engaged in a repeated or serious violation of the Standards of Conduct (e.g., physical or sexual assault, property destruction, disorderly behavior, theft, second incident of misconduct involving alcohol or drugs), individual Good Samaritans will not be subject to formal University disciplinary action for misconduct discovered by the University as a result of the Good Samaritan's report. While no formal University disciplinary action may be taken, the individual students who acted as a Good Samaritan may be required to meet with a University staff member to discuss the individual Good Samaritan's misconduct and adhere to appropriate remedial and/or educational recommendations.
- (4) Amnesty for Individual Impaired Students. Unless individual impaired students have engaged in a repeated or serious violation of the Standards of Conduct (e.g., physical or sexual assault, property destruction, disorderly behavior, theft, second incident of misconduct involving alcohol or drugs), individual impaired students will not be subject to formal University disciplinary action for misconduct discovered by the University as a result of the Good Samaritan's report. While no formal University disciplinary action may be taken, the individual impaired students may be required to meet with a University staff member, participate in educational activities, and/or establish that the individual students have addressed issues that contributed to the misconduct.
- (5) Application of the Amnesty Policy to Student Organizations. Student organizations, through their officers and members, are also expected to take responsible action in emergency situations. While the Policy on Amnesty for Individual Good Samaritans and Students in Need of Emergency Medical Attention may not fully apply, adherence to steps described in Section .11(2) by a student organization's officers and/or members will be considered a mitigating factor when determining the outcome of or sanction for

misconduct. Additionally, the University will consider a failure of officers and/or members to adhere to steps described in Section .11(2) to be an aggravating factor when determining the outcome of or sanction for misconduct.

**1720-04-03-.12 EMERGENCY POWERS.** When, in the judgment of the University's Chancellor, conditions are such that it is impractical for the Student Conduct Board to function, the Vice Chancellor for Student Life may suspend these procedural regulations and appoint an ad hoc committee to hear a conduct matter. Any such ad hoc committee shall follow procedures that will insure that the Respondent is provided with due process. The final decision of the ad hoc committee may be appealed to the Vice Chancellor for Student Life, but the grounds for appeal are limited to those outlined in Section .08(6)(c).

**1720-04-03-.13 MAINTENANCE, DISCLOSURE, AND EXPUNGEMENT OF STUDENT DISCIPLINARY RECORDS.**

(1) Maintenance of Student Disciplinary Records. The University maintains student disciplinary records separately from student academic records.

(2) Disclosure of Student Disciplinary Records while a Student is Enrolled.

(a) While a student is enrolled in the University, SCCS may disclose disciplinary records to University officials who have a legitimate educational interest in the disciplinary records subject to Section 13(2)(b), or to students who request to inspect their disciplinary records. SCCS may disclose disciplinary records to other persons only in accordance with state or federal law and in some circumstances will be required by state or federal law to disclose disciplinary records (e.g., subpoena, judicial order).

(b) While a student is still enrolled in the University but applying for post-graduation employment or graduate school, SCCS will disclose a student's disciplinary records to persons outside of SCCS only if one of the following sanctions was imposed on the student while the student was enrolled in the University: suspension; expulsion; withholding of degree; or revocation of degree. Notwithstanding the previous sentence, SCCS will disclose disciplinary records as required by state or federal law (e.g., subpoena, judicial order).

(2)(3) Disclosure of Student Disciplinary Records after a Student is no Longer Enrolled. After a student is no longer enrolled in the University, SCCS will disclose a student's disciplinary records to persons outside of SCCS only if one of the following sanctions was imposed on the student while the student was enrolled in the University: suspension; expulsion; withholding of degree; or revocation of degree. Notwithstanding the previous sentence, SCCS will disclose disciplinary records as required by state or federal law (e.g., subpoena, judicial order).

(3)(4) Expungement of Student Disciplinary Records. SCCS permanently maintains student disciplinary records for students who have received the following sanctions (or their equivalents under previous versions of the Code): suspension; expulsion; withholding of degree; or revocation of degree. SCCS expunges student disciplinary records for other students seven (7) years after graduation or the last date of enrollment, except as prohibited by law or a University litigation hold.

**1720-04-03-.14 DEFINITIONS OF TERMS USED IN THE CODE.** The following words, terms, or phrases, when used in the Code, shall have the following meanings:

- (1) Attend: To participate in a meeting or hearing electronically or in person.
- (2) Business Day: Any weekday not designated by the University as a holiday or administrative closure day. When calculating a time period of business days specified in the Code, the business day of the event that triggers a time period is excluded.
- (3) Chairperson: A faculty or staff member appointed by SCCS to preside over and facilitate a SCB Hearing.
- (4) Code, Code of Conduct, or Student Code of Conduct: The University of Tennessee, Knoxville's Student Code of Conduct, Chapter 1720-04-03.
- (5) Complainant: An individual who may have been subjected to student conduct that violates the Standards of Conduct, regardless of whether that individual makes a complaint or report to SCCS. This term does not imply pre-judgment concerning whether the Respondent violated the Standards of Conduct. SCCS is the final decision maker with respect to whether an individual is a Complainant for purposes of the Code.
- (6) Conduct Officer: A University employee designated by SCCS to present information on behalf of SCCS to the Student Conduct Board. The Conduct Officer shall be employed in the Division of Student Life but is not required to be employed by SCCS. However, in a case involving alleged academic dishonesty in which SCCS has not issued a Notice of Allegations, the instructor generally will be designated as the Conduct Officer.
- (7) Disciplinary Hold: The University hold described in Section .06(4)(c).
- (8) Disciplinary Records: A written record that personally identifies a Respondent and is maintained by SCCS.
- (9) Faculty Member or Instructor: A person hired by the University to conduct teaching, research, or supervised clinical placements.
- (10) Formal Hearing: A SCB Hearing, a hearing before a Student Life Hearing Officer, and/or a UAPA Hearing.
- (11) Good Faith: Having a belief in the truth of information that a reasonable person in the same position could have, based on the information known to the person communicating the information at the time the information was communicated by that person. Information is not communicated in good faith if it is communicated with knowing or reckless disregard for information that would negate the former information.
- (12) Knoxville Area: The geographical area that consists of the following counties in the state of Tennessee: Knox, Anderson, Union, Grainger, Jefferson, Sevier, Blount, Loudon, and Roane.
- (13) Member of the University Community: A person who is a student, University employee, University volunteer, invited visitor to University-controlled property, or participant in a University-affiliated activity.
- (14) Notice or Notify (given to students): Written notice transmitted by United States mail, courier service, or hand delivery to the address the University's Registrar has on file for the student; and/or by e-mail to a student's University-provided e-mail account. When a notice is transmitted by United States mail or courier service, the notice is effective on the

date that it is mailed or delivered to the courier service. When a notice is transmitted by hand delivery, the notice is effective on the date that it is delivered to the person to whom the notice is addressed. When a notice is transmitted by e-mail, the notice is effective on the date that the e-mail is sent. A student's University-issued email address is the official method of communication used by SCCS.

- (15) Possession: Direct control of a substance or property, actual knowledge of a substance or property, and/or being in such close proximity to the substance or property that it is a reasonable presumption that one had knowledge of the substance or property.
- (16) Protected Activity: A person's good faith: (1) opposition to conduct prohibited under the Standards of Conduct; (2) report to the University about conduct prohibited under the Standards of Conduct to the University; (3) participation (or reasonable expectation of participation) in any manner in an investigation, meeting, hearing, or interim measure; or (4) exercise of rights or responsibilities under any provision of the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act.
- (17) Reasonable Person: A sober, objectively reasonable person in the same situation, and with the same sex, gender identity, and sexual orientation as the person whose words and/or conduct are being evaluated.
- (18) Relevant Information: Information having any tendency to make the existence of any fact that is of consequence to determining whether the Respondent violated the Standards of Conduct more probable or less probable than it would be without the information.
- (19) Respondent: A student or student organization who has been accused of violating the Standards of Conduct and/or whose conduct is being investigated by SCCS.
- (20) Sanction: An administrative sanction and/or a developmental sanction.
- (21) SCB: Student Conduct Board.
- (22) SCCS: The Office of Student Conduct and Community Standards, which acts through University employees designated by the Director of SCCS to act on behalf of the University in the student conduct process, including, without limitation University employees who work in SCCS and University employees who work in University Housing.
- (23) Staff Member: A person employed by the University on a part- or full-time basis, primarily involved in planning, organizing, staffing, directing and controlling efforts to achieve the goals and objectives of the University.
- (24) Standards of Conduct: Chapter 1720-04-03-.04.
- (25) Student: For purposes of the Code, the term "student" means:
  - (a) A person enrolled or registered for study at the University, either full-time or part-time, pursuing undergraduate, graduate, or professional studies, as well as non-degree and non-credit programs and courses;
  - (b) A student organization;

- (c) A person who has completed the immediately preceding academic term and is eligible for re-enrollment;
  - (d) A person who is not officially enrolled but who has a continuing relationship with the University (e.g., on educational leave or other approved leave status);
  - (e) A person who attended the University during a previous academic term and who engaged in misconduct during the time of enrollment; and/or
  - (f) A person who has been admitted to the University and later matriculates at the University, with respect to misconduct:
    - 1. That occurs as part of the application process; or
    - 2. That occurs post-admission and pre-matriculation and falls within the jurisdiction of the Code (e.g., occurs on University-controlled property).
- (26) Student Life Hearing Officer. As more fully described in Section .07(2)(d), a University employee designated by the Director of SCCS to conduct a Formal Hearing.
- (27) Student Organization: An organization that is composed solely of University students that has submitted a pending application or has completed the process for registration according to University rules.
- (28) UAPA: Uniform Administrative Procedures Act, Tennessee Code Annotated, § 4-5-301 et seq.
- (29) UAPA Hearing: A hearing conducted by an ~~University~~ administrative judge or hearing officer in accordance with the University's procedures for conducting a contested case hearing pursuant to the UAPA, Chapter 1720-01-05.
- (30) University: The University of Tennessee, Knoxville; the University of Tennessee Institute of Agriculture; and their campuses, centers, institutes, and constituent parts including, without limitation, their academic, administrative, or auxiliary departments or divisions.
- (31) University-Affiliated Activity: means an activity on or off University-controlled property that is initiated, aided, authorized, sponsored, or supervised by the University.
- (32) University-Controlled Property: All land, grounds, structures, or any other property owned, controlled, or operated by the University. For purposes of this rule, University-controlled property includes, without limitation, all streets, alleys, sidewalks, and public ways abutting such property. University-controlled property also includes computers and network systems owned, controlled, or operated by the University or funded by the University.
- (33) University Official: An employee of the University, including, without limitation, faculty members and staff members, or, for purposes of this Code, a University-recognized volunteer, when acting in the performance of their duties. Student employees may be considered University officials when acting in the performance of their duties (e.g., event staff, resident assistants, and teaching assistants).
- (34) Vice Chancellor for Student Life: The University's chief student affairs officer, to whom the Chancellor has delegated responsibility for the administration of the Code. For the

purposes of the Code, the term also includes any University employee whom the Vice Chancellor for Student Life designates to act in place of the Vice Chancellor for Student Life.

- (35) **Weapon:** Any device, instrument, or substance that is designed to, or reasonably could be expected to, inflict a wound, incapacitate, or cause serious bodily injury or death, including, without limitation, firearms (loaded and unloaded, real firearms and devices that would reasonably appear to a law enforcement officer to be real firearms), ammunition, electronic control devices (such as tasers and stun guns), devices designed to discharge an object (such as bb guns, air guns, pellet guns, potato guns, and slingshots, but not water guns), explosives, dangerous chemicals (such as mace, tear gas, and oleoresin capsicum), martial arts weapons, bows and arrows, artificial knuckles, nightsticks, blackjacks, dirks, daggers, swords, and knives with fixed blades longer than four (4) inches. The term "weapon" does not include pocket knives that fold (but not excluding switchblades); chemical repellents available over-the-counter for self-defense; instruments used solely for personal hygiene, preparation of food, maintenance, University-related instruction, or University employment-related duties.
- (36) **Written:** To communicate words either on paper and/or electronically. For example, a notice delivered via e-mail constitutes a written notice under the Code.

\* If a roll-call vote was necessary, the vote by the Agency on these rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Governor Bill Haslam				X	
Commissioner Candace McQueen				X	
Commissioner Jai Templeton	X				
Dr. Joe DiPietro	X				
Charles C. Anderson, Jr.	X				
Shannon Brown				X	
George E. Cates	X				
Dr. Terrance G. Cooper	X				
Spruell Driver, Jr.	X				
Dr. William E. Evans				X	

SS-7040 (September 2017)

RDA 1693

John N. Foy	X			
Crawford Gallimore	X			X
Vicky B. Gregg	X			
Raja J. Jubran	X			
Mike Krause (non-voting)				X
Brad A. Lampley	X			
Dr. Beauvais Lyons (non-voting)				
Andrew P. McBride	X			
Sharon J. Pryse	X			
David A. Shepard	X			
John D. Tickle	X			
Charles Weber (non-voting)				
Julia T. Wells	X			
Charles E. Wharton	X			
Tommy G. Whittaker				X

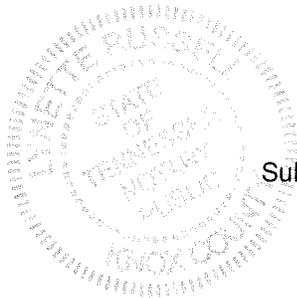
I certify that this is an accurate and complete copy of an emergency rule(s), lawfully promulgated and adopted.

Date: July 5, 2018

Signature: \_\_\_\_\_

Name of Officer: Matthew Scoggins

Title of Officer: General Counsel



Subscribed and sworn to before me on: 7-5-18

Notary Public Signature: \_\_\_\_\_

My commission expires on: 12-4-18

Agency/Board/Commission: The University of Tennessee (Knoxville)

Rule Chapter Number(s): 1720-04-03 Student Code of Conduct

All emergency rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Herbert H. Slatery III  
Herbert H. Slatery III  
Attorney General and Reporter  
7/25/2018  
Date

Agency/Board/Commission: The University of Tennessee (Knoxville)

Rule Chapter Number(s): 1720-04-03 Student Code of Conduct

**Department of State Use Only**

Filed with the Department of State on: 7/30/19

Effective for: 180 \*days

Effective through: 1/26/19

*\* Emergency rule(s) may be effective for up to 180 days from the date of filing.*



Tre Hargett  
Secretary of State

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PUBLICATIONS

## G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: University of Tennessee

DIVISION:

SUBJECT: Traffic and Parking Regulations

STATUTORY AUTHORITY: The promulgation of this rule is not mandated by any federal or state law or regulation.

EFFECTIVE DATES: November 7, 2018 through June 30, 2019

FISCAL IMPACT: None

STAFF RULE ABSTRACT: The University of Tennessee at Martin (UTM) has completed a review of its current operations regarding traffic and parking on campus. In order to make several necessary updates to its processes, including vehicle registration, enforcement, and appeals, UTM needs to revise its parking rule.

Highlights of the revised rule include updating language to reflect current operational practices; providing clarity on the applicability of the rule and the responsibilities of vehicle owners and registrants; and revising enforcement and appeal procedures. There is no change in the fine structure for registration, parking, or other violations.

## **Regulatory Flexibility Addendum**

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process, all agencies shall conduct a review of whether a proposed rule or rule affects small business.

The rules are not anticipated to have an effect on small businesses.

## **Impact on Local Governments**

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 “any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments.” (See Public Chapter Number 1070 (<http://publications.tnsosfiles.com/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

The rules are not anticipated to have an impact on local governments.

**Additional Information Required by Joint Government Operations Committee**

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

The University of Tennessee at Martin (UTM) has completed a review of its current operations regarding traffic and parking on campus. In order to make several necessary updates to its processes, including vehicle registration, enforcement, and appeals, UTM needs to revise its parking rule.

Highlights of the revised rule include updating language to reflect current operational practices; providing clarity on the applicability of the rule and the responsibilities of vehicle owners and registrants; and revising enforcement and appeal procedures. There is no change in the fine structure for registration, parking, or other violations.

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

None

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

Students of The University of Tennessee are most directly affected by this rule. The student member of the UT Board of Trustees voted to approve the rule. No person requested to address the Board of Trustees during the part of the meeting set aside for public comment. The Board of Trustees requests adoption of this rule.

- (D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule or the necessity to promulgate the rule;

None

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

None

- (F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Petra R. McPhearson  
Vice Chancellor for Finance and Administration  
The University of Tennessee at Martin

Matthew Scoggins  
General Counsel  
The University of Tennessee

- (G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Petra R. McPhearson  
Vice Chancellor for Finance and Administration  
The University of Tennessee at Martin

Matthew Scoggins

General Counsel  
The University of Tennessee

- (H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Petra R. McPhearson  
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224 Hall-Moody Administration Building  
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The University of Tennessee  
719 Andy Holt Tower  
Knoxville, TN 37996-0170  
[scoggins@tennessee.edu](mailto:scoggins@tennessee.edu)  
865-974-3245

- (I) Any additional information relevant to the rule proposed for continuation that the committee requests.

**Department of State  
Division of Publications**

312 Rosa L. Parks Ave., 8th Floor, Snodgrass/TN Tower  
Nashville, TN 37243  
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**For Department of State Use Only**

Sequence Number: 08-08-18  
Rule ID(s): 7223  
File Date: 8/9/18  
Effective Date: 11/7/18

## Proposed Rule(s) Filing Form

*Proposed rules are submitted pursuant to Tenn. Code Ann. §§ 4-5-202, 4-5-207, and 4-5-229 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within ninety (90) days of the filing of the proposed rule with the Secretary of State. To be effective, the petition must be filed with the Agency and be signed by ten (10) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of ten (10) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.*

*Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).*

**Agency/Board/Commission:** University of Tennessee  
**Division:**  
**Contact Person:** Matthew Scoggins, General Counsel  
**Address:** 719 Andy Holt Tower, 1331 Circle Park, Knoxville, TN  
**Zip:** 37996-0170  
**Phone:** 865-974-3245  
**Email:** [scoggins@tennessee.edu](mailto:scoggins@tennessee.edu)

**Revision Type (check all that apply):**

- Amendment  
 New  
 Repeal

**Rule(s)** (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that **ALL** new rule and repealed rule numbers are listed in the chart below. Please enter only **ONE** Rule Number/Rule Title per row)

Chapter Number	Chapter Title
1720-05-06	Traffic and Parking Regulations
Rule Number	Rule Title
1720-05-06-.01	General
1720-05-06-.02	Registration of Vehicles
1720-05-06-.03	Parking
1720-05-06-.04	Vehicle Operation
1720-05-06-.05	Violations
1720-05-06-.06	Penalties
1720-05-06-.07	Appeals
1720-05-06-.08	Pedestrian Regulations
1720-05-06-.09	Special Occasions and Emergencies

RULES  
OF  
THE UNIVERSITY OF TENNESSEE AT MARTIN

CHAPTER 1720-05-06  
TRAFFIC AND PARKING REGULATIONS

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<u>1720-05-06-.02</u>	<u>Registration of Vehicles</u>	<u>1720-05-06-.07</u>	<u>Appeals</u>
<u>1720-05-06-.03</u>	<u>Parking</u>	<u>1720-05-06-.08</u>	<u>Pedestrian Regulations</u>
<u>1720-05-06-.04</u>	<u>Vehicle Operation</u>	<u>1720-05-06-.09</u>	<u>Special Occasions and Emergencies</u>
<u>1720-05-06-.05</u>	<u>Violations</u>		

1720-05-06-.01 GENERAL.

- (1) These regulations are established by The University of Tennessee at Martin ("UTM") Parking Authority, appointed by the University administration as directed by resolution of The University of Tennessee Board of Trustees on June 20, 1968. They are applicable to all UTM students, faculty, staff, and visitors on the UTM campus. Any persons operating vehicles on the UTM campus are subject to and required to comply with these traffic and parking regulations. Students, faculty, and staff are required to obey these traffic and parking regulations as a condition of their attendance/employment at UTM.
- (2) The purposes of these regulations are to facilitate the safe and orderly conduct of UTM business and to provide parking facilities in support of this function within the limits of available space.
- (3) The UTM Department of Public Safety is responsible for implementation and enforcement of these regulations.
- (4) A vehicle may be considered abandoned when the vehicle is left unattended on UTM property or on a city street adjacent to UTM property for more than seventy-two (72) consecutive hours or when other circumstances exist that indicate to UTM, in its discretion, that the vehicle has been abandoned. Under such circumstances, the UTM Department of Public Safety will place a warning sticker on the vehicle and if the vehicle is not moved within twenty-four (24) hours after such notice is given, UTM may remove the vehicle to an area of UTM's choosing at the vehicle owner's expense.
- (5) All persons with a UTM vehicle registration decal are requested to remove such decal before disposing of the vehicle. Wherever used in this rule, "vehicle registration decal" means a decal issued by UTM that has not expired and, when properly displayed on a vehicle, authorizes a vehicle to be parked in certain designated parking spaces on UTM property.

1720-05-06-.02 REGISTRATION OF VEHICLES.

- (1) All vehicles operated by faculty, staff and students in connection with their employment or attendance at UTM must be registered with the UTM Department of Public Safety. This includes, but is not limited to, residents of Grove and University Courts Apartments who use UTM parking lots. For purposes of these regulations, a vehicle is operated by a faculty member, staff member, or student if the vehicle is being used to transport the faculty member, staff member, or student to/from the UTM campus.
- (2) Persons not affiliated with UTM who have a need to regularly park on the UTM campus may be issued special vehicle registration decals as needed. Those persons may park in parking spaces for the time identified or designated by the special parking permit.

- (3) Vehicle registration decals are issued at the time of student registration and must be properly displayed.
- (4) Faculty and staff vehicle registration decals and collection of associated fees will be conducted prior to the beginning of each Fall semester and will be valid for the entire academic year. Vehicle registration will not be completed until the previous year's citations have been cleared. New employees will be required to pay the vehicle registration fee at the time of their employment to obtain a vehicle registration decal.
- (5) Student vehicle registration and collection of associated fees must be renewed at, or prior to, the beginning of each Fall semester and will be valid for the entire academic year.
- (6) Student vehicle registrations must be completed prior to the first day of classes. If a student enrolls after the first day of classes, then the student must complete his/her vehicle registration within two (2) business days of enrollment. If a student begins using a vehicle on campus subsequent to the date of his/her enrollment, then the student must complete his/her vehicle registration within two (2) business days of first using the vehicle on campus.
- (7) Generally, a student vehicle can only be registered in one (1) classification: commuter or non-commuter. However, students who meet certain requirements may register vehicles as staff. To register as a staff member the student must teach eight (8) semester hours or have a forty (40) hour work week specified on appointment papers. The registration of student vehicles as staff members will be by agreement between the appropriate department chairman or dean and the UTM Department of Public Safety.
- (8) UTM students, faculty, or staff with permanent disabilities and who possess a disability plate or placard issued by the State of Tennessee will be issued a vehicle registration decal at no charge. Students, faculty, or staff with temporary disabilities may apply for a temporary parking permit by submitting a written statement from a doctor to the UTM Department of Public Safety.
- (9) The registrant is responsible for his/her registered vehicle and all parking violation citations relating to the parking of the registered vehicle. If the person operating the registered vehicle is other than the registrant when a parking violation is committed, both the operator and the registrant may be cited for the parking violation. However, UTM will not collect multiple fines for a single violation.
- (10) The registrant is responsible for his/her UTM parking permit and all violation citations relating to the use of the registrant's parking permit, and is prohibited from sharing or otherwise permitting the parking permit to be used by other persons. If the person using a UTM parking permit when a violation is committed is other than the registrant to whom the parking permit was issued, both the person who committed the violation and the registrant may be cited. However, UTM will not collect multiple fines for a single violation.
- (11) The owner of an unregistered vehicle is responsible for the unregistered vehicle and all parking violation citations relating to the parking of the vehicle. If the person operating an unregistered vehicle is other than the owner of the vehicle when a parking violation is committed, both the operator and the owner may be cited for the parking violation. However, UTM will not collect multiple fines for a single violation.
- (12) Expired vehicle registration decals must be removed so that only the current vehicle registration decals are displayed.
- (13) Only one (1) vehicle registration decal may be purchased by each staff/faculty member or student, unless it is a replacement vehicle registration decal. The vehicle registration decal may be transferred to another vehicle either permanently or temporarily.

#### **1720-05-06-.03 PARKING.**

- (1) Staff parking areas are designated for all academic buildings on UTM property. Students shall

not park in staff parking areas between 8:00 a.m. and 3:00 p.m. Monday through Friday or at other times designated by the UTM Department of Public Safety.

- (2) Student parking areas are designated by letter, e.g., C-Commuting students, N-Non-commuting students. Student's vehicles may be parked only in lots designated on the student's vehicle registration decal and only during the hours provided on parking lot signage or at other times designated by the UTM Department of Public Safety.
- (3) The absence of "no parking" signs or painted curbs/lines does not imply that parking is allowed. Parking in designated lots is restricted to marked spaces only. Vehicles parked outside of marked spaces are subject to being issued a citation and/or towed/booted
- (4) Vehicles with disability plates or placards may park in any parking space on campus. Vehicles with UTM temporary parking permits for persons with temporary disabilities may park in any parking space on campus except for permanently designated disability parking spaces.

#### **1720-05-06-.04 VEHICLE OPERATION.**

- (1) All persons operating vehicles on UTM property or in the campus area, which includes city streets adjacent to UTM property, must be properly licensed operators.
- (2) Pedestrians have the right-of-way at established pedestrian crossings, except where regulated by traffic control lights or police officers.
- (3) The maximum speed limit on campus streets is 15 mph and 30 mph on the city streets, unless otherwise posted. However, vehicles may not be operated at any speed which is excessive for the conditions which may exist as a result of weather, traffic congestion, pedestrians, etc.
- (4) Traffic control signs and directions of police officers must be obeyed.
- (5) All persons operating vehicles are responsible for maintaining control of the vehicle, safe operation, and observance of traffic control signs, barriers and devices.
- (6) Operating or parking a vehicle in any area other than a street, roadway, or parking lot intended for vehicles is prohibited. Special parking exceptions must receive prior approval by the UTM Department of Public Safety.

#### **1720-05-06-.05 TYPES OF VIOLATIONS.**

Violations of this regulation shall include, but are not limited to, the following:

- (1) Registration.
  - (a) Vehicles not registered.
  - (b) Vehicle registration decals not properly affixed to vehicle.
  - (c) Unauthorized possession of vehicle registration decals.
  - (d) Falsification of registration information.
  - (e) Illegal use, reproduction, or alteration of a vehicle registration decal or of a temporary parking permit.
- (2) Parking.
  - (a) In no parking areas, loading zones, or on grass.
  - (b) In unauthorized areas.

- (c) In such a manner as to block or obstruct traffic, street, sidewalk, driveway, fire hydrant, building entrance or exit, or another vehicle.
- (d) In areas where curb is painted yellow or red or in areas not marked as a parking area with painted white lines.
- (e) Vehicles parked in such a manner as to prohibit the emptying of trash dumpsters will be towed/booted away at the owner's expense.
- (f) Disability parking violation, as defined by state law (e.g., an unauthorized use of a disabled parking space, ramp, plate, or placard; parking a vehicle so that a portion of the vehicle encroaches into a disabled parking space in a manner which restricts, or reasonably could restrict, a person confined to a wheelchair from exiting or entering a vehicle properly parked within the disabled parking space).
- (g) Each calendar day constitutes a separate offense for a vehicle parked in the same location in violation of these regulations.

(3) Moving.

- (a) Exceeding posted speed limit.
- (b) Excessive speed for existing conditions.
- (c) Failure to obey traffic control sign or signal.
- (d) Failure to obey police officer.
- (e) Operating vehicle without valid operator's license.
- (f) Driving off of roadway or street.
- (g) Reckless driving and/or racing.
- (h) Failure to yield right-of-way at pedestrian crossing.
- (i) Leaving scene of accident.
- (j) Failure to signal turn or stop.
- (k) Following too closely.
- (l) Operating mechanically unsafe vehicle.
- (m) Driving while under the influence of alcohol or narcotics.
- (n) Operating vehicle causing loud or unnecessary noise, such as loud mufflers, horns, P.A. systems, etc.

**1720-05-06-.06 PENALTIES.**

(1) Fines and Other Penalties.

- (a) The fine for registration or parking violations is twenty-five dollars (\$25), except for the following violations:
  - 1. Vehicle registration decal not properly affixed to a vehicle – twenty dollars (\$20);
  - 2. Parking in a no parking area or a loading zone – thirty dollars (\$30);

3. Parking in such a manner as to block or obstruct traffic, a street, a driveway, a fire hydrant, a building entrance or exit, or another vehicle – thirty dollars (\$30) (the fine is twenty-five dollars (\$25) for blocking a sidewalk or building entrance or exit);
4. Parking in an area where curb is painted red – forty dollars (\$40);
5. Parking in an area that is not marked as a parking area with painted white lines – twenty dollars (\$20);
6. Parking in such a manner as to prohibit the emptying of trash dumpsters – thirty dollars (\$30) and the vehicle will be towed/booted;
7. The fine for a disability parking violation is set by State law, Tennessee Code Annotated section 55-21-108. As of July 1, 2008, the fine was set at two hundred dollars (\$200). The fine imposed under these regulations will increase or decrease automatically when increased or decreased by State law. The fine shall not be suspended or waived. In addition to the fine, not more than five (5) hours of community service work may be imposed. Any community service work requirements imposed shall be to assist the disabled community by monitoring disabled parking spaces, providing assistance to disability centers or to disabled veterans, or other such purposes; or
8. Unauthorized possession of vehicle registration decals; falsification of registration information; and/or illegal use, reproduction, or alteration of vehicle registration decals – at the discretion of UTM, up to two hundred dollars (\$200) per violation and restitution to the victim; or referral to City or General Sessions Court. UTM students and employees also may be subject to discipline under other UTM policies and procedures.

(b) A person who commits a moving violation will be referred to City or General Sessions Court.

(2) Student Disciplinary Action.

(a) Students who persist in violating these regulations or commit a single violation surrounded by aggravated circumstances will be referred to the Office of Student Affairs for disciplinary action in accordance with Chapter 1720-05-01.

(b) If more than five (5) citations are issued to a student in one (1) semester, the student will be notified by a warning sticker being placed on the vehicle window that his/her vehicle is subject to being towed/booted. If, after this notification, the student receives another citation during the same semester, the student's vehicle will be subject to towing/booting for that citation and each subsequent citation for the remainder of that semester, even if the previous citations have been satisfied by paying fines or other penalties.

(c) Any student having outstanding citations (citations which have not been paid) will not be allowed to register for further course work until all such charges have been paid, unless authorized by UTM. No transcripts or other similar information will be made available for such students.

(3) Enforcement.

(a) A citation for any type of parking violation must be paid or appealed within fourteen (14) calendar days after the issuance of the citation. Failure to pay or appeal a citation within fourteen (14) calendar days after issuance of the citation constitutes a separate violation of these regulations. If a fine is not paid or appealed within fourteen (14)

calendar days after the issuance of the citation, a twenty dollar (\$20.00) late charge will be added.

- (b) Windshield notices and/or other methods of notification will be used to provide the owner/operator of the vehicle with: (1) advance notice of UTM's intent to tow/boot the vehicle as a result of the vehicle receiving more than five (5) citations in one (1) semester and (2) the owner's/operator's right to a hearing. In the event the owner/operator does not request a hearing or prevail at the hearing, his/her vehicle will be towed/booted whenever it is next found upon UTM property parked illegally.
- (c) Vehicles parked in a fire lane, designated disability parking spaces, reserved parking spaces, or in such manner as to impede the flow of traffic or disrupt the orderly affairs of UTM may be towed/booted/impounded without advance notice. Owners/operators of vehicles towed/booted/impounded for the above reasons have a right to a hearing by a UTM official that will be provided upon request prior to the payment of any towing/booting charges, fines, and penalties. If towing/booting charges, fines, or penalties are assessed after such hearing, impounded/towed/booted vehicles will be released upon proper identification and receipt of payment of all towing/booting charges, fines, and penalties.
- (d) Vehicles that are towed/booted/impounded or otherwise immobilized under these traffic and parking regulations will be released only upon the owner or registrant of the vehicle providing identification and paying to UTM all previously unpaid parking fines, penalties, and towing/booting charges levied by UTM. The release of a vehicle impounded in an impound lot not owned or operated by UTM also may be subject to payment of additional fees or charges levied by the owner/operator of the impound lot.

#### **1720-05-06-.07 APPEALS.**

- (1) Citations may be appealed to the Traffic Office and then to the Traffic Appeals Board. The decisions of the Traffic Appeals Board are final. The Traffic Appeals Board, which is composed of faculty, staff and students, meets each Fall semester and each Spring semester. The Traffic Appeals Board will review and make decisions by email communication on appeals that are submitted during the summer.
- (2) Parking citations appeals may be submitted online at the UTM Department of Public Safety parking website ([http://www.utm.edu/departments/publicsafety/citations\\_appeals.php](http://www.utm.edu/departments/publicsafety/citations_appeals.php)) within fourteen (14) calendar days of the issuance of the citation. Alternately, appeals may be mailed or hand-delivered to the Traffic Office. Persons who fail to appeal a parking citation within fourteen (14) calendar days of the citation's issuance forfeit their right to appeal the citation.

**1720-05-06-.08 PEDESTRIAN REGULATIONS.** Students, faculty, staff, and visitors must not endanger their safety or constitute an unreasonable impediment to lawful vehicular traffic by crossing streets at other than authorized lanes or by willfully walking or congregating in the streets.

**1720-05-06-.09 SPECIAL OCCASIONS AND EMERGENCIES.** On special occasions, such as athletic events, concerts, and graduation exercises, and in emergencies, parking and traffic limitations may be imposed by the UTM Department of Public Safety as required by the conditions which prevail.

**RULES  
OF  
THE UNIVERSITY OF TENNESSEE AT MARTIN**

**CHAPTER 1720-05-06  
TRAFFIC AND PARKING REGULATIONS**

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**~~1720-05-06-.01 GENERAL.~~**

- ~~(1) — These regulations are established by The University of Tennessee at Martin Parking Authority, appointed by the University administration as directed by resolution of The University of Tennessee Board of Trustees on June 20, 1968. They are applicable to all University students, faculty, and staff on the Martin campus. Students, faculty, and staff are required to obey these traffic and parking regulations as a condition of their attendance/employment at the University.~~
- ~~(2) — The purposes of these regulations are to facilitate the safe and orderly conduct of University business and to provide parking facilities in support of this function within the limits of available space.~~
- ~~(3) — The UT Martin Department of Public Safety is responsible for implementation and enforcement of these regulations.~~
- ~~(4) — The owner of any vehicle operating or parked on the campus shall assume all risk of loss or damage to such vehicle and its contents. The University shall have no responsibility for the safety, care, and protection of vehicles or their contents.~~
- ~~(5) — When any vehicle is left unattended on University property or on a city street adjacent to University property for more than forty-eight (48) hours under circumstances that indicate that the vehicle has been abandoned, the University may remove the vehicle to an area of the University's choosing at the vehicle owner's expense.~~
- ~~(6) — All persons with a UT Martin registration decal are requested to remove such decal before disposing of the vehicle.~~

**~~1720-05-06-.02 REGISTRATION OF VEHICLES.~~**

- ~~(1) — All motor vehicles operated by faculty, staff and students in connection with their employment or attendance at UT Martin must be registered at the UT Martin Department of Public Safety. This includes, but is not limited to, residents of Grove and University Courts Apartments who use UT Martin parking lots. For purposes of these regulations, a motor vehicle is operated by a faculty member, staff member, or student if the vehicle is being used to transport the faculty member, staff member, or student to the UT Martin campus.~~
- ~~(2) — Persons not affiliated with UT Martin who have a need to regularly visit the UT Martin campus or have a need to visit the UT Martin campus to conduct business with UT Martin may be issued special vehicle registration decals as needed. Those persons may park in parking spaces for the time designated by the special parking permit.~~
- ~~(3) — Vehicle registration decals are issued at the time of student registration and must be properly displayed.~~
- ~~(4) — Faculty and staff vehicle registration and collection of associated fees will be conducted prior to the beginning of each fall semester and will be valid for the entire academic year. Vehicle registration will not be completed until the previous year's citations have been cleared. New employees will be required to pay the vehicle registration fee at the time of their employment.~~
- ~~(5) — Student vehicle registration and collection of associated fees must be renewed at, or prior to, the beginning of each fall semester and will be valid for the entire academic year.~~
- ~~(6) — Student vehicle registrations must be completed prior to the first day of classes. If a student enrolls after the first day of classes, then the student must complete his/her vehicle~~

registration within twenty-four (24) hours of enrollment. If a student acquires a vehicle subsequent to the date of his/her enrollment, then the student must complete his/her vehicle registration within twenty-four (24) hours of the acquisition of the vehicle.

- (7) — Generally, a student vehicle can only be registered in one classification: commuter or non-commuter. However, students who meet certain requirements may register vehicles as staff. To register as a staff member the student must teach eight (8) semester hours or have a forty (40) hour work week specified on appointment papers. The registration of student vehicles as staff members will be by agreement between the appropriate department chairman or dean and the Department of Public Safety.
- (8) — UT Martin students, faculty, or staff with permanent disabilities and who possess a disability plate or placard issued by the state of Tennessee will be issued a vehicle registration decal at no charge. Students, faculty, or staff with temporary disabilities may apply for a temporary parking permit by submitting a written statement from a doctor to the Department of Public Safety.
- (9) — The person to whom a vehicle registration decal is registered is responsible for that vehicle registration decal and all violation citations issued thereto. If the person displaying the vehicle registration decal is other than the registrant when a violation is committed, both he and the registrant may be cited.
- (10) — Expired vehicle registration decals must be removed so that only the current vehicle registration decals are displayed.
- (11) — Only one vehicle registration decal may be purchased by each staff/faculty member or student, unless it is a replacement vehicle registration decal. The vehicle registration decal may be transferred to another vehicle either permanently or temporarily.

#### **1720-05-06-.03 — PARKING.**

- (1) — Staff parking areas are designated for all academic buildings. Students shall not park in staff parking areas between 8:00 a.m. and 3:00 p.m. Monday through Friday or at other times designated by the Department of Public Safety.
- (2) — Student parking areas are designated by letter, e.g., C-Commuting students, N-Non-commuting students. Student's vehicles may be parked only in lots designated on the student's registration decal between 8:00 a.m. and 3:00 p.m. Monday through Friday or at other times designated by the Department of Public Safety.
- (3) — The absence of "no parking" signs or painted curbs/lines does not imply that parking is allowed. Parking in designated lots is restricted to marked spaces only. Vehicles parked outside of marked spaces are subject to being issued a citation and/or towed.
- (4) — Vehicles with disability plates or placards may park in any parking space on campus. Vehicles with temporary parking permits for persons with temporary disabilities may park in any parking space on campus except for disability parking spaces.

#### **1720-05-06-.04 — VEHICLE OPERATION.**

- (1) — All persons operating vehicles on University property or in the campus area, which includes city streets adjacent to University property, must be properly licensed operators.
- (2) — Pedestrians have the right of way at established pedestrian crossings, except where regulated by traffic control lights or police officers.
- (3) — The maximum speed limit on campus streets is 15 mph and 30 mph on the city streets, unless otherwise posted. However, vehicles may not be operated at any speed which is excessive for the conditions which may exist as a result of weather, traffic congestion, pedestrians, etc.

- (4) — Traffic control signs and directions of police officers must be obeyed.
- (5) — All persons operating vehicles are responsible for maintaining control of the vehicle, safe operation, and observance of traffic control signs, barriers and devices.
- (6) — Operating or parking a motor vehicle in any area other than a street, roadway, or parking lot intended for motor vehicles is prohibited.

**~~1720-05-06-.05 VIOLATIONS.~~**

(1) — Registration.

- (a) — Vehicles not registered.
- (b) — Registration decals not properly affixed to vehicle.
- (c) — Unauthorized possession of registration decals.
- (d) — Falsification of registration information.
- (e) — Illegal use, reproduction, or alteration of a vehicle registration decal or temporary parking permit.

(2) — Parking.

- (a) — In no parking areas, loading zones, or on grass.
- (b) — In unauthorized areas.
- (c) — In such a manner as to block or obstruct traffic, street, sidewalk, driveway, fire hydrant, building entrance or exit, or another vehicle.
- (d) — In areas where curb is painted yellow or red or in areas not marked as a parking area with painted white lines.
- (e) — Vehicles parked in such a manner as to prohibit the emptying of trash dumpsters will be towed away at the owner's expense.
- (f) — Disability parking violation, as defined by state law (e.g., an unauthorized use of a disabled parking space, ramp, plate, or placard; parking a vehicle so that a portion of the vehicle encroaches into a disabled parking space in a manner which restricts, or reasonably could restrict, a person confined to a wheelchair from exiting or entering a vehicle properly parked within the disabled parking space).
- (g) — Each calendar day constitutes a separate offense for a vehicle parked in the same location in violation of these regulations.

(3) — Moving.

- (a) — Exceeding posted speed limit.
- (b) — Excessive speed for existing conditions.
- (c) — Failure to obey traffic control sign or signal.
- (d) — Failure to obey police officer.
- (e) — Operating vehicle without valid operator's license.
- (f) — Driving off of roadway or street.

- (g) ~~Reckless driving and/or racing.~~
- (h) ~~Failure to yield right of way at pedestrian crossing.~~
- (i) ~~Leaving scene of accident.~~
- (j) ~~Failure to signal turn or stop.~~
- (k) ~~Following too closely.~~
- (l) ~~Operating mechanically unsafe vehicle.~~
- (m) ~~Driving while under the influence of alcohol or narcotics.~~
- (n) ~~Operating vehicle causing loud or unnecessary noise, such as loud mufflers, horns, P.A. systems, etc.~~

**1720-05-06-.06 PENALTIES.**

- (1) ~~Fines and Other Penalties.~~
  - (a) ~~The fine for registration or parking violations is twenty five (\$25) dollars, except for the following violations:~~
    - 1. ~~Registration decal not properly affixed to a vehicle — twenty (\$20) dollars;~~
    - 2. ~~Parking in a no parking area or a loading zone — thirty (\$30) dollars;~~
    - 3. ~~Parking in such a manner as to block or obstruct traffic, a street, a driveway, a fire hydrant, a building entrance or exit, or another vehicle — thirty (\$30) dollars (the fine is twenty five (\$25) dollars for blocking a sidewalk or building entrance or exit);~~
    - 4. ~~Parking in an area where curb is painted red — forty (\$40) dollars;~~
    - 5. ~~Parking in an area that is not marked as a parking area with painted white lines — twenty (\$20) dollars;~~
    - 6. ~~Parking in such a manner as to prohibit the emptying of trash dumpsters — thirty (\$30) dollars and the vehicle will be towed;~~
    - 7. ~~The fine for a disability parking violation is set by State law, Tennessee Code Annotated section 55-21-108. As of July 1, 2008, the fine was set at two hundred (\$200) dollars. The fine imposed under these regulations will increase or decrease automatically when increased or decreased by State law. The fine shall not be suspended or waived. In addition to the fine, not more than five (5) hours of community service work may be imposed. Any community service work requirements imposed shall be to assist the disabled community by monitoring disabled parking spaces, providing assistance to disability centers or to disabled veterans, or other such purposes.~~
    - 8. ~~Unauthorized possession of registration decals; falsification of registration information; and/or illegal use, reproduction, or alteration of registration decals — at the discretion of the University, up to two hundred dollars (\$200) per violation and restitution to the victim; or referral to City or General Sessions Court. University students and employees also may be subject to discipline under other University policies and procedures.~~
  - (b) ~~A person who commits a moving violation will referred to City or General Sessions Court.~~

~~(2) Disciplinary Action.~~

- ~~(a) Students who persist in violating these regulations or commit a single violation surrounded by aggravated circumstances will be referred to the Office of Student Affairs for disciplinary action.~~
- ~~(b) If more than five citations are issued to a student in one semester, the student will be notified that their vehicle is subject to being towed. If, after this notification, the student receives another citation during the same semester, the student's vehicle will be subject to towing for that citation and each subsequent citation for the remainder of that semester, even if the previous citations have been satisfied by paying fines or other penalties.~~
- ~~(c) Any student having outstanding citations (citations which have not been paid) will not be allowed to register for further work until all such charges have been paid.~~

~~No transcripts or other information will be made available for such students who are seeking entrance into other institutions.~~

~~(3) Enforcement.~~

- ~~(a) A citation for any type of parking violation must be paid or appealed within fourteen (14) calendar days after the issuance of the citation. Failure to pay or appeal a citation within fourteen (14) calendar days after issuance of the citation constitutes a separate violation of these regulations. If a fine is not paid or appealed within fourteen (14) calendar days after the issuance of the citation, a \$20.00 late charge will be added.~~
- ~~(b) Windshield notices and/or other methods of notification will be used to provide the owner of the vehicle with: (1) advance notice of the University's intent to tow the owner's vehicle as a result of the owner receiving more than five citations in one semester and (2) the owner's right to a hearing. In the event the owner does not request a hearing or prevail at the hearing, his vehicle will be towed whenever it is next found upon the University property parked illegally.~~
- ~~(c) Vehicles parked in a fire lane, designated disability parking space, reserved parking space, or in such manner as to impede the flow of traffic or disrupt the orderly affairs of the University may be towed/booted/impounded. Owners of vehicles towed/booted/impounded for the above reasons have a right to a hearing by a University official that will be provided on request prior to the payment of any tow charges, fines, and penalties. If tow charges, fines, or penalties are assessed after such hearing, impounded/towed/booted vehicles will be released upon proper identification and receipt of payment of all tow charges, fines, and penalties.~~

**~~1720-05-06-.07 APPEALS.~~**

- ~~(1) Appeals must be made within fourteen days of the date of citation issuance.~~
- ~~(2) Citations may be appealed to the Traffic Office and then to the Traffic Appeals Board. The Traffic Appeals Board, which is composed of faculty, staff and students, meets each semester. Citations appealed after fourteen (14) days of issuance must be appealed directly to the Traffic Appeals Board in writing and all fines and charges must be paid prior to the appeal, including late charges.~~

**~~1720-05-06-.08 RESTRICTIONS.~~** University streets or grounds may not be used by any firm, corporation, or unauthorized person for advertising or commercial purposes.

**~~1720-05-06-.09 PEDESTRIAN REGULATIONS.~~** Students and staff members must not endanger their safety or constitute an unreasonable impediment to lawful vehicular traffic by crossing streets at other than authorized lanes or by willfully walking or congregating in the streets.

**~~1720-05-06-.10 SPECIAL OCCASIONS AND EMERGENCIES.~~** On special occasions, such as athletic

events, concerts, and graduation exercises, and in emergencies, parking and traffic limitations may be imposed by the Department of Public Safety as required by the conditions which prevail.

\* If a roll-call vote was necessary, the vote by the Agency on these rules was as follows:

<b>Board Member</b>	<b>Aye</b>	<b>No</b>	<b>Abstain</b>	<b>Absent</b>	<b>Signature (if required)</b>
Governor Bill Haslam				X	
Commissioner Candace McQueen				X	
Commissioner Jai Templeton	X				
Dr. Joe DiPietro	X				
Charles C. Anderson, Jr.	X				
Shannon Brown				X	
George E. Cates	X				
Dr. Terrance G. Cooper	X				
Spruell Driver, Jr.	X				
Dr. William E. Evans				X	
John N. Foy	X				
Crawford Gallimore	X			X	
Vicky B. Gregg	X				
Raja J. Jubran	X				
Mike Krause (non-voting)				X	
Brad A. Lampley	X				
Dr. Beauvais Lyons (non-voting)					
Andrew P. McBride	X				
Sharon J. Pryse	X				
David A. Shepard	X				
John D. Tickle	X				
Charles Weber (non-voting)					
Julia T. Wells	X				
Charles E. Wharton	X				
Tommy G. Whittaker				X	

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by The University of Tennessee on 06/22/2018, and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of ninety (90) days of the filing of the proposed rule with the Secretary of State.

Date: July 19, 2018

Signature: 

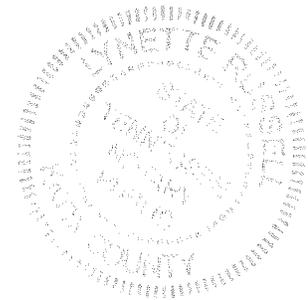
Name of Officer: Matthew Scoggins

Title of Officer: General Counsel

Subscribed and sworn to before me on: 7-19-18

Notary Public Signature: 

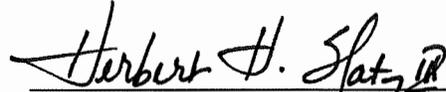
My commission expires on: 12-4-18



Agency/Board/Commission: University of Tennessee

Rule Chapter Number(s): 1720-05-06 Traffic and Parking Regulations

All emergency rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

  
\_\_\_\_\_  
Herbert H. Slatery III  
Attorney General and Reporter  
8/2/2018 \_\_\_\_\_  
Date

**Department of State Use Only**

Filed with the Department of State on: 8/9/18 \_\_\_\_\_

Effective on: 11/7/18 \_\_\_\_\_

  
\_\_\_\_\_  
Tre Hargett  
Secretary of State

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## G.O.C. STAFF RULE ABSTRACT

<u>DEPARTMENT:</u>	Intellectual and Developmental Disabilities
<u>DIVISION:</u>	Office of General Counsel
<u>SUBJECT:</u>	Office of Administrative Appeals
<u>STATUTORY AUTHORITY:</u>	Tennessee Code Annotated, Section 4-5-301, <i>et seq.</i>
<u>EFFECTIVE DATES:</u>	November 4, 2018 through June 30, 2019
<u>FISCAL IMPACT:</u>	Minimal
<u>STAFF RULE ABSTRACT:</u>	<p>These rules will govern the operations of the newly formed Office of Administrative Appeals (OAA) within the Department of Intellectual and Developmental Disabilities (DIDD). These rules will also provide for due process appeal rights for employees of DIDD contracted providers and other persons who are substantiated at the Class I level in DIDD investigations for allegations of abuse, neglect, or exploitation (A/N/E) of vulnerable persons, or who have three or more Class II substantiations for incidents occurring or discovered within a 24 month period.</p> <p>The rules will allow OAA to conduct file reviews of substantiations if requested by the perpetrator. If a file review is not requested or is resolved against the perpetrator, that person will have the right to request a hearing conducted by an administrative law judge (ALJ) of the Secretary of State's Administrative Procedures Division (APD) challenging the substantiation(s) and/or referral to the State's Abuse Registry. If persons do not appeal, or their appeals are resolved against them, their names will be placed on DIDD's Substantiated Investigations Records Inquiry (SIRI) database making information about substantiations available to DIDD providers who are current or prospective employers of those persons.</p> <p>Appeals of referrals by DIDD's Abuse Registry Review Committee to the State's Abuse Registry will be conducted by ALJs of the APD. Challenges to both a referral to the</p>

Abuse Registry and the underlying substantiation(s) will be conducted by the ALJ in one hearing.

NOTE: The redline copy of the rule provided in this packet contains no strikethroughs or underlining as the rule is a new rule.

## Public Hearing Comments

One copy of a document that satisfies T.C.A. § 4-5-222 must accompany the filing.

All comments were submitted by TNCO (Tennessee Community Organizations)

### 1) Comment regarding Rule 0465-03-.01(1): Appeals Generally

Comment: "The Department allows for an appeal to be made on substantiated investigations. However, these appeals are made to the same department that has pronounced the substantiation. If the appeal to the Department is unsatisfactory to the individual a hearing will take place by a judge that is appointed by the same department. It would be our contention that true due process could occur only if the judge appointed to oversee the hearing be appointed by and outside of the scope of the department."

Response: As articulated in the rules, DIDD will be using Administrative Law Judges from the Tennessee Secretary of State's office and not DIDD employees or judges appointed by the department. These Administrative Law Judges are completely separate and distinct from the department.

### 2) Comment regarding Rule 0465-03-.04(3) Scope

Comment: "Please define potential employer and potential victims."

Response: The purpose of this section of the rule is to make clear that DIDD reserves the right to notify, or warn, employers or providers who may become employers ("potential employer"), about an alleged perpetrator if circumstances warrant such notification to prevent imminent danger or threats to safety of vulnerable persons. The term "potential victim" was intended to mean a person supported who has not been harmed but could potentially be harmed. Typically, such notifications or warnings occur rarely and only in circumstances of urgency when DIDD becomes aware that the alleged perpetrator has already harmed at least one vulnerable person.

### 3) Comment regarding Rule 0465-03-.05(j) Definitions

Comment: "We are unable to locate this document on the website."

Response: The Substantiation Classification Form will be posted on the website prior to the start of this new process.

### 4) Comment regarding Rule 0465-03-.07(1) Information Regarding Right to Appeal

Comment: "Can we receive a copy of the Notice of Appeal information that will be sent out?"

Response: The notice that will be sent to the substantiated person describing appeal rights is in the finalization process. Once the notice is final it will be posted to the DIDD website.

### 5) General Comment

Comment: "The standards utilized by DIDD investigators when classifying substantiations Class I and Class II need to be set forth. An individual is not able to rebut a classification of a Class I substantiation if the basis of the classification of Class I is not defined. The Class I and Class II categories affect the rights and privileges of individuals and therefore they are required to be promulgated as rules. A Class I substantiation places a person on SIRI, while it takes 3 Class II substantiations to place a person on SIRI."

Response: The Substantiation Classification Form will be posted on the website prior to the start of this new process.

## 6) General Comment

Comment: "SIRI needs to be further addressed by regulation. Specifically, the rules need to address who and how the database will be accessed. Will the public have access? Will Providers have access? Is SIRI subject to public records requests, and if not, why not. I think persons who are substantiated should know who will have access to the database."

Response: SIRI will be implemented when the rules go into effect. DIDD will be promulgating a policy addressing these questions.

## **Regulatory Flexibility Addendum**

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process, all agencies shall conduct a review of whether a proposed rule or rule affects small business.

There is no fiscal impact to small businesses.

## **Impact on Local Governments**

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 “any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments.” (See Public Chapter Number 1070 (<http://publications.tnsosfiles.com/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

The proposed rules should have no impact on local governments.

## Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

These rules will govern the operations of the newly formed Office of Administrative Appeals (OAA) within the Department of Intellectual and Developmental Disabilities (DIDD). These rules will also provide for due process appeal rights for employees of DIDD contracted providers and other persons who are substantiated at the Class I level in DIDD investigations for allegations of abuse, neglect or exploitation (A/N/E) of vulnerable persons, or who have three or more Class II substantiations for incidents occurring or discovered within a 24 month period.

The rules will allow OAA to conduct file reviews of substantiations if requested by the perpetrator. If a file review is not requested or is resolved against the perpetrator, that person will have the right to request a hearing conducted by an administrative law judge (ALJ) of the Secretary of State's Administrative Procedures Division (APD) challenging the substantiation(s) and/or referral to the State's Abuse Registry. If persons do not appeal, or their appeals are resolved against them, their names will be placed on DIDD's Substantiated Investigations Records Inquiry (SIRI) database making information about substantiations available to DIDD providers who are current or prospective employers of those persons.

Appeals of referrals by DIDD's Abuse Registry Review Committee to the State's Abuse Registry will be conducted by ALJs of the APD. Challenges to both a referral to the Abuse Registry and the underlying substantiation(s) will be conducted by the ALJ in one hearing.

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

Hearings before the ALJs are governed by the Uniform Administrative Procedures Act, T.C.A. § 4-5-301, *et seq.* ("Contested Cases") and the rules of the Tennessee Department of State, Administrative Procedures Division, Chapter 1360-04 "Uniform Rules of Procedure for Hearing Contested Cases Before State Administrative Agencies." DIDD considers the procedures established by these rules to be required by Federal due process standards. See *Wright v. O'Day*, 706 F.3d 769 (6<sup>th</sup> Cir. 2013); *Brady v. Henry*, case 3:14-cv-01751 (ruling on February 13, 2015, by Judge Trauger denying State's motion to dismiss).

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

Direct Support Professional (DSPs) serve as the "front line" caregivers for most of the persons supported by DIDD. Providing due process appeal rights to DSPs will provide additional protections for these employees and, indirectly, their employers who contract with the department. Many providers have requested such appeal rights for their employees, and DIDD considers them necessary for compliance with constitutional due process requirements.

- (D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule or the necessity to promulgate the rule;

Please see court opinions cited above. The constitutionally protected interest in employment has been recognized in Attorney General Opinions 12-22 and 05-158.

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

Public Acts of 2016, Public Chapter 758, Section 57, Item 1 appropriated \$329,100 in total funds for personnel and operational costs for DIDD's Office of Administrative Appeals. Since this figure is less than .2% of DIDD's budget for the same fiscal year, the fiscal impact is minimal.

- (F)** Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Fredrick Zimmermann, Esq., Director of Administrative Appeals, Jean Brock, Esq., Richard Prybilla, Esq.

- (G)** Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Fredrick Zimmermann, Director of Administrative Appeals, Theresa C. Sloan, Assistant Commissioner and General Counsel

- (H)** Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Office of Administrative Appeals, Harrington House, 253 Stewarts Ferry Pike, Nashville, TN 37214; phone (615) 253-8406; [Fredrick.Zimmermann@tn.gov](mailto:Fredrick.Zimmermann@tn.gov) and Office of General Counsel, Citizens Plaza, 10<sup>th</sup> Floor, 400 Deaderick Street, Nashville, TN 37219-9969; (615) 253-6811; [Theresa.C.Sloan@tn.gov](mailto:Theresa.C.Sloan@tn.gov)

- (I)** Any additional information relevant to the rule proposed for continuation that the committee requests.

Not applicable

**Department of State  
Division of Publications**

312 Rosa L. Parks Ave., 8th Floor, Snodgrass/TN Tower  
Nashville, TN 37243  
Phone: 615-741-2650  
Email: [publications.information@tn.gov](mailto:publications.information@tn.gov)

**For Department of State Use Only**

Sequence Number: 08-03-18  
Rule ID(s): 7221  
File Date: 8/6/18  
Effective Date: 11/4/18

# Rulemaking Hearing Rule(s) Filing Form

*Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing (Tenn. Code Ann. § 4-5-205).*

*Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).*

**Agency/Board/Commission:** Tennessee Department of Intellectual and Developmental Disabilities  
**Division:** Office of General Counsel  
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**Revision Type (check all that apply):**

- Amendment  
 New  
 Repeal

**Rule(s)** (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that ALL new rule and repealed rule numbers are listed in the chart below. Please enter only ONE Rule Number/Rule Title per row)

Chapter Number	Chapter Title
0465-03	Office of Administrative Appeals
Rule Number	Rule Title
0465-03-.01	Appeals Generally
0465-03-.02	Effective Date
0465-03-.03	Legal Basis
0465-03-.04	Scope
0465-03-.05	Definitions
0465-03-.06	Right to Appeal; Contact Information of Appellant
0465-03-.07	Information Regarding Right to Appeal
0465-03-.08	Time Limitations Applicable
0465-03-.09	Requests for File Reviews Challenging Substantiations
0465-03-.10	Requests for Hearings Challenging Referrals for Placement on the Abuse Registry and/or Class I Substantiations
0465-03-.11	Requests for Hearings Challenging Substantiation(s) for Which a Referral to the Abuse Registry Was Not Made
0465-03-.12	File Reviews
0465-03-.13	Reopened Investigations
0465-03-.14	Hearings Generally

0465-03-.15	Separations of Functions
0465-03-.16	Filing of Documents
0465-03-.17	Agency Record
0465-03-.18	Review of Initial Orders Issued by Administrative Judges
0465-03-.19	Reconsideration of Initial or Final Order
0465-03-.20	Stay of Effectiveness of Final Order
0465-03-.21	Judicial Review of Final Order
0465-03-.22	Clerical Mistakes

0465-03-.01 Appeals Generally.

- (1) When a person who has been substantiated at the Class I level for abuse, neglect, misappropriation of property of, or exploitation of, a vulnerable person ("A/N/E"); or who has three (3) or more Class II substantiations in separate investigations for incidents occurring or discovered within a twenty-four (24) month period, whether or not that substantiation(s) resulted in a referral for placement on the State's registry of persons who have abused, neglected, exploited or misappropriated the property of vulnerable individuals ("Abuse Registry"), is dissatisfied with any action taken or intended to be taken by the Department of Intellectual and Developmental Disabilities (hereinafter referred to as "DIDD" or "department"), that person has the right to appeal to have the matter decided by a department official in a file review proceeding, or if a hearing is requested, by an administrative judge of the Administrative Procedures Division of the Office of Secretary of State.
- (2) Administrative actions taken by the department pursuant to judicial or administrative order or which are the subject of pending or concluded judicial or administrative proceedings shall not be subject to review by the processes described herein.

Authority: T.C.A. §§ 4-3-103, 4-3-2708, 4-5-101, et seq., 4-5-217, 4-5-301, et seq., 33-1-302, 33-1-303, 33-1-305, 33-1-309. Administrative History: Original rule filed \_\_\_\_\_, 2018, effective \_\_\_\_\_, 2018.

0465-03-.02 Effective Date.

The effective date of the rules set forth in this chapter shall be \_\_\_\_\_, 2018. Appeal rights provided for in these rules are available for those substantiations described herein resulting from incidents occurring or discovered on or after the effective date.

Authority: T.C.A. §§ 4-5-207, 4-5-208. Administrative History: Original rule filed \_\_\_\_\_, 2018, effective \_\_\_\_\_, 2018.

0465-03-.03 Legal Basis.

The commissioner of DIDD has the authority to make and enforce rules that are necessary for the lawful operation of the department's programs and services. The commissioner, and any employee of the department to whom such responsibility has been delegated, has the authority to review decisions made by DIDD employees, including decisions regarding substantiations of persons who were the subject of DIDD administrative investigations. The commissioner may also utilize administrative judges employed by the Secretary of State to conduct contested case hearings of departmental matters.

Authority: T.C.A. §§ 4-3-103, 4-3-2708, 4-5-101, et seq., 4-5-208, 4-5-217, 4-5-301, et seq., 33-1-302, 33-1-303, 33-1-305, 33-1-309. Administrative History: Original rule filed \_\_\_\_\_, 2018, effective \_\_\_\_\_, 2018.

0465-03-.04 Scope.

- (1) Subject to any superseding federal or state law, these rules apply to and establish procedures for administrative appeals of Class I substantiations; three (3) or more Class II substantiations in separate investigations for incidents occurring or discovered within a twenty-four (24) month period; and referrals by DIDD of substantiated persons to the State's Abuse Registry. Contested case hearings of such matters, when requested, will be conducted by administrative judges of the Administrative Procedures Division of the Secretary of State and will be governed by the rules of the Tennessee Department of State, Administrative Procedures Division, Chapter 1360-04 "Uniform Rules of Procedure for Hearing

Contested Cases Before State Administrative Agencies.”

- (2) The Office of Administrative Appeals (OAA) is a unit of DIDD. The OAA is responsible for receiving appeals of those adverse administrative actions by the department which are defined below, conducting file reviews when requested, and arranging for, coordinating and prosecuting on behalf of DIDD contested case hearings before administrative judges of the Administrative Procedures Division (APD). Attorneys from DIDD's Office of General Counsel may also prosecute contested case hearings for the department. The APD is a division of the Secretary of State and is not a part of DIDD.
- (3) Nothing in these rules shall be construed to restrict the department from releasing any information about an alleged perpetrator of A/N/E to any state or federal law enforcement agency investigating a report of known or suspected abuse, neglect, exploitation of, misappropriation of money or property of, or crimes involving vulnerable persons; any state or federal District Attorney, Attorney General or U. S. Attorney, or his/her authorized assistants, of judicial districts or agencies involved in investigating or prosecuting crimes against vulnerable adults; any grand jury, criminal or civil court or administrative tribunal or body in response to a valid subpoena; any DIDD-contracted provider that is a full or part-time employer, or potential employer, of the alleged perpetrator or is responsible for providing care or services to victims or potential victims of the alleged perpetrator; or any state or federal agency or official investigating allegations of abuse, neglect, exploitation or misappropriation of money or property of vulnerable adults or the alleged perpetrator(s) thereof.

Authority: T.C.A. §§ 4-3-103, 4-3-2708, 4-5-101, et seq., 4-5-301, et seq., 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-3-105, 33-3-107, 33-3-108, 33-3-110, Rules of the Department of State, Chapter 1360-04. Administrative History: Original rule filed \_\_\_\_\_, 2018, effective \_\_\_\_\_, 2018.

0465-03-.05 Definitions.

- (1) The following terms as used in these rules shall have the meanings described below:
  - (a) “Abuse” means the knowing infliction of injury, unreasonable confinement, intimidation or punishment with resulting physical harm, pain or mental anguish.
  - (b) “Abuse Registry” means the Registry maintained by the Department of Health which contains the names of persons who have abused, neglected, exploited or misappropriated property of a vulnerable person as defined in T.C.A. § 68-11-1002(8). The registry is established by T.C.A. § 68-11-1001, et seq.
  - (c) “Abuse Registry Review Committee” or “ARRC” means the DIDD committee that reviews the cases of persons who have been substantiated at the Class I level for A/N/E, or persons who have three (3) or more Class II substantiations for A/N/E in separate investigations for incidents occurring or discovered within a twenty-four (24) month period, to make decisions regarding referrals for placement on the Abuse Registry.
  - (d) “Administrative Judge” means an employee of the Administrative Procedures Division of the Office of the Secretary of State who conducts contested case hearings.
  - (e) “Administrative Procedures Division” or “APD” means the division of the Secretary of State which is responsible for conducting contested case hearings.
  - (f) “Adverse Administrative Action” means one or more of the following determinations by the department affecting an individual:
    1. Class I substantiation of a person for allegations of A/N/E following an administrative investigation conducted by DIDD and proposed placement of the perpetrator's name on DIDD's Substantiated Investigations Records Inquiry (SIRI) database;
    2. Three (3) or more Class II substantiations of a person in separate investigations for incidents occurring or discovered within a twenty-four (24) month period of an individual for allegations of A/N/E following administrative investigations conducted by DIDD and proposed placement of the perpetrator's name on DIDD's SIRI database; and

3. Proposed placement of an individual on the State's Abuse Registry, by decision of DIDD's Abuse Registry Review Committee, for either of the above.
- (g) "A/N/E" means abuse, neglect, misappropriation of money or property of, or exploitation of, a person supported by DIDD.
- (h) "Appeal" means the process by which an appellant requests review of one or more adverse administrative actions, as defined herein, in accordance with procedures set forth in these rules. Except as otherwise specified herein, an appeal may consist of a file review or a contested case hearing or both. An Initial Order issued by an administrative judge of the APD following a contested case hearing may also be appealed to the Commissioner's Designee pursuant to T.C.A. § 4-5-315 and/or to the appropriate Chancery Court pursuant to T.C.A. § 4-5-322.
- (i) "Appellant" means a person who has filed an appeal challenging an adverse administrative action, as defined herein, against that person. Under the circumstances described in Rules 0465-03-01-.12(11) and 0465-03-01-.18(1), the department may also be an appellant.
- (j) "Class I" and "Class II" are categories utilized by DIDD investigators in classifying a substantiation, with Class I being the more egregious.
1. Class I means the wrongful conduct affecting the person supported constituted abuse, neglect, exploitation, or misappropriation of money or property, and resulted in one or more of the following consequences to the person supported: death, serious injury or physical harm; physical or sexual abuse; significant pain, intimidation or mental anguish; probable risk of serious harm; loss of funds or property of greater than \$500 in value or prescription controlled medications regardless of value; or, through supervision neglect, harming a citizen in the community or engaging in criminal acts resulting in arrest and confinement. Wrongful conduct in this category is of a nature serious enough to call into question whether the offender should be entrusted with the care of vulnerable persons.
  2. Class II means the wrongful conduct affecting the person supported constituted abuse, neglect, exploitation, or misappropriation of money or property, but resulted in minimal or no physical harm or injury, pain or mental anguish; minimal risk of serious harm; loss of funds or property of up to \$500 in value; or violations of plans of care with minimal or no adverse consequences. Wrongful conduct in this category is of a nature that disciplinary action and/or additional training may reasonably be deemed sufficient to address.
- (k) "Commissioner" means the commissioner of the Tennessee Department of Intellectual and Developmental Disabilities.
- (l) "Commissioner's Designee" means a person authorized by the commissioner to review Initial Orders issued by administrative judges of the APD and to enter Final Orders pursuant to T.C.A. § 4-5-315. Reviewing officials of the OAA are also designees of the commissioner.
- (m) "Contested Case" or "Contested Case Hearing" means an administrative proceeding in which the legal rights, duties or privileges of a party are required by any statute or constitutional provision to be determined after an opportunity for a hearing. The department may commence a contested case at any time with respect to a matter within its jurisdiction. Contested case hearings are conducted by administrative judges of the APD in accordance with the APD's rules and procedures.
- (n) "Department" or "DIDD" means the Tennessee Department of Intellectual and Developmental Disabilities.
- (o) "Exploitation" means actions including but not limited to the deliberate misplacement, misappropriation or wrongful temporary or permanent use of belongings or money with or without the consent of a person using services. The illegal or improper use of a person's resources or status for another's benefit or advantage is considered exploitation.

- (p) "File Review" is a proceeding requested by an appellant and conducted by DIDD's Office of Administrative Appeals (OAA) in which the matter is decided by a reviewing official based on the department's records or file material and any written submissions by the appellant. The reviewing official may uphold, overturn, or modify the adverse administrative action.
- (q) "Final Order" means an Initial Order of an administrative judge of the APD which has become a Final Order, or an order issued by the Commissioner's Designee after review of an Initial Order, concerning a contested case. An Initial Order becomes a Final Order in accordance with T.C.A. § 4-5-314.
- (r) "Hearing" means a contested case proceeding before an administrative judge of the APD.
- (s) "Initial Order" means the written decision of the administrative judge issued after a contested case hearing.
- (t) "Misappropriation of property" means the deliberate misplacement, exploitation, or wrongful, temporary or permanent use of belongings or money without consent.
- (u) "Neglect" means failure to provide goods or services necessary to avoid physical harm, mental anguish, or mental illness, which results in injury or probable risk of serious harm.
- (v) "Party" means each person or entity participating in an appeal.
- (w) "Reviewing official" means an employee of the OAA who is designated by the commissioner to conduct file reviews.
- (x) "Substantiated" means that following a DIDD administrative investigation, a person has been determined, by a preponderance of the evidence, to have committed an act(s) against a person supported by DIDD that meets the definitions of abuse, neglect, misappropriation of property or exploitation.
- (y) "Substantiated Investigation Records Inquiry" or "SIRI" means a database maintained by DIDD containing information regarding substantiations of perpetrators of A/N/E.

Authority: T.C.A. §§ 4-3-103, 4-3-2708, 4-5-101, et seq., 4-5-301, et seq., 4-5-314, 4-5-315, 4-5-322, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-402, 68-11-1001, et seq. Administrative History: Original rule filed \_\_\_\_\_, 2018, effective \_\_\_\_\_, 2018.

#### 0465-03-.06 Right to Appeal; Contact Information of Appellant.

- (1) An appellant may appeal an adverse administrative action, as defined in Rule 0465-03-01-.05(f), by following the procedures set forth in these rules.
- (2) It is the responsibility of the appellant to provide the Office of Administrative Appeals with his or her current mailing address and other contact information and to keep that information current at all times.

Authority: T.C.A. §§ 4-3-103, 4-3-2708, 4-5-101, et seq., 4-5-301, et seq., 33-1-302, 33-1-303, 33-1-305, 33-1-309. Administrative History: Original rule filed \_\_\_\_\_, 2018, effective \_\_\_\_\_, 2018.

#### 0465-03-.07 Information Regarding Right to Appeal.

- (1) Every person against whom an adverse administrative action, as defined in Rule 0465-03-01-.05 (f), has been taken by the department shall be provided a written notice, sent to the last known address of the recipient, which contains the following information:
  - (a) Notice of the department's adverse administrative action and any intended action as a consequence thereof;
  - (b) A notice of the right to appeal;

- (c) A description of the appeal options available and the steps by which an appeal can be perfected; and
  - (d) A statement of the deadline(s) for the taking of appropriate steps to perfect the appeal and that failure to timely request an appeal will result in a waiver of appeal rights.
- (2) For a Class I substantiation or three (3) or more Class II substantiations in separate investigations for incidents occurring or discovered within a twenty-four (24) month period, the items listed in subsection (1) above will be included in a letter or notice issued by the department within ten (10) business days following the Class I substantiation, or, if applicable, within ten (10) business days after the determination by DIDD that the third Class II substantiation has occurred.
  - (3) For a referral for placement on the Abuse Registry, the items listed in subsection (1) above will be included in a letter or notice issued by the department within ten (10) business days following the meeting of the Abuse Registry Review Committee at which the substantiated perpetrator's case was considered.
  - (4) For a Class I substantiation or three (3) or more Class II substantiations in separate investigations for incidents occurring or discovered within a twenty-four (24) month period for which a referral for placement on the Abuse Registry was not made, the items listed in subsection (1) above will be included in a letter or notice issued by the department within ten (10) business days following the meeting of the Abuse Registry Review Committee at which the substantiated perpetrator's case was considered.
  - (5) The notifications required by subsections (2), (3) and (4) of this rule shall be sent by certified and regular mail to the last known address of the recipient. The notifications will be accompanied by an appropriate response or election form for use by the recipient in responding to the department and exercising or declining his/her rights to appeal.

Authority: T.C.A. §§ 4-3-103, 4-3-2708, 4-5-101, et seq., 4-5-301, et seq., 33-1-302, 33-1-303, 33-1-305, 33-1-309. Administrative History: Original rule filed \_\_\_\_\_, 2018, effective \_\_\_\_\_, 2018.

0465-03-.08 Time Limitations Applicable.

- (1) Requests for appeals will be accepted only if submitted in writing, in compliance with Rule 0465-03-01-.16, and within the time limits set forth below.
  - (a) For a request for a file review challenging a Class I substantiation or three (3) or more Class II substantiations in separate investigations for incidents occurring or discovered within a twenty-four (24) month period: within fifteen (15) calendar days following the date of the notice containing the information required by Rule 0465-03-01-.07 (2).
  - (b) For a request for a hearing challenging a referral for placement on the Abuse Registry: within sixty (60) calendar days following the date of the notice containing the information required by Rule 0465-03-01-.07 (3).
  - (c) For a request for a hearing challenging a Class I substantiation or three (3) or more Class II substantiations in separate investigations for incidents occurring or discovered within a twenty-four (24) month period: within sixty (60) calendar days following the date of the notice containing the information required by Rule 0465-03-01-.07 (4).
- (2) In computing any period of time prescribed or allowed by statute, rule, or order, the time within which any act provided by law is to be done shall be computed by excluding the first day and including the last, unless the last day is a Saturday, a Sunday, or state or federal holiday, in which event the period runs until the end of the next day which is neither a Saturday, a Sunday nor a holiday.

Authority: T.C.A. §§ 4-3-103, 4-3-2708, 4-5-101, et seq., 4-5-301, et seq., 33-1-302, 33-1-303, 33-1-305, 33-1-309. Administrative History: Original rule filed \_\_\_\_\_, 2018, effective \_\_\_\_\_, 2018.

0465-03-.09 Requests for File Reviews Challenging Substantiations.

- (1) An appellant requesting a file review challenging a Class I substantiation or three (3) or more Class II

substantiations in separate investigations for incidents occurring or discovered within a twenty-four (24) month period and who has received a notice of the type specified in Rule 0465-03-01-.07(2) may request a file review of the substantiation(s).

- (2) A person who elects to take no action, or who fails to respond timely to the notice, waives the right to a file review but does not waive the right to request a hearing challenging the substantiation(s) and/or referral by the ARRC for placement of the person's name on the Abuse Registry after the ARRC meeting at which that substantiation(s) was considered.
- (3) An appellant requesting a file review may submit any documentation or other evidence that he/she wishes to have considered by the reviewing official. Such material should be submitted no later than fifteen (15) calendar days following the date of the notice containing the information required by Rule 0465-03-01-.07(2), unless a longer period is requested by the appellant prior to the expiration of the deadline and is approved by the reviewing official.

Authority: T.C.A. §§ 4-3-103, 4-3-2708, 4-5-101, et seq., 4-5-301, et seq., 33-1-302, 33-1-303, 33-1-305, 33-1-309. Administrative History: Original rule filed \_\_\_\_\_, 2018, effective \_\_\_\_\_, 2018.

#### 0465-03-.10 Requests for Hearings Challenging Referrals for Placement on the Abuse Registry and/or Substantiations.

- (1) A person who has received a notice of the type specified in Rule 0465-03-01-.07 (3) may:
  - (a) Request a hearing challenging only the referral for placement on the Abuse Registry, in which case the substantiation is not at issue, and the person's name will be placed on the SIRI database for the underlying substantiation(s); or
  - (b) Request a hearing challenging both the referral for placement on the Abuse Registry and the substantiation(s) on which the referral was based.
- (2) A person who elects to take no action, or who fails to respond timely to the notice, waives all appeal rights. The person's name will be placed on the Abuse Registry as well as on the SIRI database for the underlying substantiation(s).

Authority: T.C.A. §§ 4-3-103, 4-3-2708, 4-5-101, et seq., 4-5-301, et seq., 33-1-302, 33-1-303, 33-1-305, 33-1-309, 68-11-1001, et seq. Administrative History: Original rule filed \_\_\_\_\_, 2018, effective \_\_\_\_\_, 2018.

#### 0465-03-.11 Requests for Hearings Challenging Substantiation(s) for Which a Referral to the Abuse Registry Was Not Made.

- (1) A person who has received a notice of the type specified in Rule 0465-03-01-.07 (4) may request a hearing challenging the substantiation.
- (2) A person who elects to take no action, or who fails to respond timely to the notice, waives all appeal rights. The person's name will be placed on the SIRI database.

Authority: T.C.A. §§ 4-3-103, 4-3-2708, 4-5-101, et seq., 4-5-301, et seq., 33-1-302, 33-1-303, 33-1-305, 33-1-309. Administrative History: Original rule filed \_\_\_\_\_, 2018, effective \_\_\_\_\_, 2018.

#### 0465-03-.12 File Reviews.

- (1) A file review is an informal proceeding in which the reviewing official reviews the department's files, which may include the investigation report and file and any submissions by the appellant, and then makes a determination, reflected in a decision letter, whether to uphold, modify or overturn the adverse administrative action.
- (2) Submissions by the appellant relating to file reviews of substantiations shall be made available by the OAA to DIDD's Director of Investigations or designee within three (3) business days of receipt thereof. The Director of Investigations or designee shall, within three (3) business days of receipt of these documents, notify the OAA in writing if the investigation(s) will be reopened with respect to the appellant's

substantiation(s). If so, Rule 0465-03-01-.13 will be applicable.

- (3) Formal pleadings or affidavits are not required, but all written submissions shall be filed and become part of the record of the proceeding.
- (4) Discovery procedures do not apply to file reviews.
- (5) The party requesting the file review shall be designated as the "Appellant," and DIDD shall be designated as the "Department" or "DIDD."
- (6) In consideration of materials reviewed, the reviewing official shall not be constrained by rules of evidence but shall give the items considered the weight that he or she deems appropriate.
- (7) The reviewing official will consider the information available and make a determination whether, based on a preponderance of the evidence, the adverse administrative action taken by the department was or was not justified in light of applicable statutes and other authorities, including but not limited to other rules and policies.
- (8) The decision letter will be issued by the reviewing official not later than thirty (30) calendar days following receipt of the appellant's request for a file review unless circumstances exist which make a delay unavoidable.
- (9) The decision letter will be mailed to the appellant and distributed to DIDD personnel as appropriate.
- (10) If the decision of the reviewing official is to modify or overturn the substantiation(s), an addendum will be issued by the investigations unit in accordance with the decision letter or, if a hearing is conducted, with the Initial or Final Order.
- (11) Following any file review authorized by these rules in which the other party has not requested a hearing, DIDD may, if dissatisfied with the decision of the reviewing official, within fifteen (15) calendar days following the expiration of the other party's right to request a hearing, file with the OAA and serve on the other party a notice of intention to commence a contested case hearing challenging that decision. Thereafter, DIDD must file a notice of charges with the APD within thirty (30) calendar days of the date of said notice.

Authority: T.C.A. §§ 4-3-103, 4-3-2708, 4-5-101, et seq., 33-1-302, 33-1-303, 33-1-305, 33-1-309. Administrative History: Original rule filed \_\_\_\_\_, 2018, effective \_\_\_\_\_, 2018.

#### 0465-03-.13 Reopened Investigations.

- (1) If, as a result of documents or other evidence submitted by an appellant in support of his/her request for a file review of a substantiation(s), or if for any other reason an investigation is reopened under circumstances which could affect the substantiation(s) of an appellant with a pending file review request, the appellant will be notified in writing that the file review is suspended pending outcome of the additional investigation.
- (2) If the pending file review request was for a Class I substantiation, upon the closing of the additional investigation, the appellant will be notified in writing of the outcome as it pertains to him or her. If the Class I substantiation was overturned, and there was no other Class I substantiation against the appellant resulting from that investigation, he/she will be notified that the file review proceeding is closed. If the appellant remains substantiated at the Class I level following the additional investigation, he/she will be notified in writing that the file review will be resumed. The thirty (30) day period specified in Rule 0465-03-.12(8) for completion of the file review will commence following the date of the notification specified in this paragraph.
- (3) If the pending file review request was for three (3) or more Class II substantiations in separate investigations for incidents occurring or discovered within a twenty-four (24) month period, upon the closing of the additional investigation, the appellant will be notified in writing of the outcome as it pertains to him or her. If the Class II substantiation was overturned, and there was no other Class II substantiation against the appellant resulting from that investigation, he/she will be notified that the file review

proceeding is closed. If the appellant remains substantiated at the Class II level following the additional investigation, he/she will be notified in writing that the file review will be resumed. The thirty (30) day period specified in Rule 0465-03-.12(8) for completion of the file review will commence following the date of the notification specified in this paragraph.

Authority: T.C.A. §§ 4-3-103, 4-3-2708, 4-5-101, et seq., 33-1-302, 33-1-303, 33-1-305, 33-1-309. Administrative History: Original rule filed \_\_\_\_\_, 2018, effective \_\_\_\_\_, 2018.

#### 0465-03-.14 Hearings Generally.

- (1) A hearing is a contested case proceeding conducted by administrative judges of the APD in accordance with the APD's rules and procedures. Parties should refer to Tennessee Department of State, Administrative Procedures Division Chapter 1360-04 "Uniform Rules of Procedure for Hearing Contested Cases Before State Administrative Agencies."
- (2) Initial Orders issued by administrative judges, stays of effectiveness of Initial Orders, or petitions for reconsideration of Initial Orders are governed by T.C.A. §§ 4-5-314, 4-5-316 and 4-5-317, respectively.

Authority: T.C.A. §§ 4-3-103, 4-3-2708, 4-5-101, et seq., 4-5-301, et seq., 33-1-302, 33-1-303, 33-1-305, 33-1-309. Administrative History: Original rule filed \_\_\_\_\_, 2018, effective \_\_\_\_\_, 2018.

#### 0465-03-.15 Separation of Functions.

A person who has served as, or is subject to the authority, direction, or discretion of one who has served as, an investigator, or who has otherwise participated in a determination made in an administrative investigation or related proceeding which is the subject of an appeal, or who has had any direct or indirect involvement in the adverse administrative action under consideration prior to the filing of the appeal, may not serve as a reviewing official, attorney representative or Commissioner's Designee in the same or related proceeding. No reviewing official may serve as an attorney representative in a hearing if he or she has previously conducted a file review in the same or related proceeding.

Authority: T.C.A. §§ 4-3-103, 4-3-2708, 4-5-101, et seq., 33-1-302, 33-1-303, 33-1-305, 33-1-309. Administrative History: Original rule filed \_\_\_\_\_, 2018, effective \_\_\_\_\_, 2018.

#### 0465-03-.16 Filing of Documents.

- (1) To be considered timely filed, all documents required to be filed by a date certain with the OAA shall be filed by delivering such materials in person or in any other manner, including mail or hand delivery, fax or email, provided they are actually received by the OAA during normal business hours and within the required time period. For purposes of these rules, normal business hours are between 8:00 a.m. and 4:30 p.m. C.S.T. Monday through Friday, excluding state and federal holidays.
- (2) All documents required to be filed with the OAA shall be stamped with the date of receipt; provided, however, that if a document is hand delivered or sent by fax or email after hours or on a weekend or holiday, it shall be deemed received on the date of the next business day and will be date-stamped with that date. A copy of any document sent by fax or email for filing will be deemed an original document and maintained in the file.
- (3) All requests for appeals received by the OAA shall be acknowledged in writing. The acknowledgement shall be sent, within three (3) business days of receipt of the request, by mail or by email to the address(es) provided by the appellant.
- (4) For documents required to be filed with the APD in a contested case, the APD's rules and procedures are applicable.

Authority: T.C.A. §§ 4-3-103, 4-3-2708, 4-5-101, et seq., 4-5-301, et seq., 33-1-302, 33-1-303, 33-1-305, 33-1-309. Administrative History: Original rule filed \_\_\_\_\_, 2018, effective \_\_\_\_\_, 2018.

#### 0465-03-.17 Agency Record.

- (1) The department's official record of each appeal shall be maintained for not less than five (5) years from the date a decision letter is issued in a file review, an Initial Order becomes a Final Order, or a Final Order is issued, whichever is later.
- (2) The record shall include paper or electronic copies of:
  - (a) All documents submitted by the appellant in a file review;
  - (b) Correspondence between the reviewing official and the parties, including the decision letter issued upon completion of a file review;
  - (c) All pleadings, orders, transcribed testimony, recordings, or other record of oral proceedings, and correspondence filed, issued, or generated in a contested case proceeding; and
  - (d) All pleadings, orders, and correspondence filed, issued, or generated in a proceeding before the Commissioner's Designee.
- (3) Except to the extent otherwise provided by law, the agency record, including the record of oral proceedings, shall constitute the exclusive basis for agency action in contested cases, departmental review, and judicial review thereof.

Authority: T.C.A. §§ 4-3-103, 4-3-2708, 4-5-101, et seq., 10-7-501, et seq., 33-1-302, 33-1-303, 33-1-305, 33-1-309. Administrative History: Original rule filed \_\_\_\_\_, 2018, effective \_\_\_\_\_, 2018.

#### 0465-03-.18 Review of Initial Orders Issued by Administrative Judges.

- (1) Except in circumstances described in T.C.A. § 4-5-315(a)(1) and (2), the department may review, and upon petition for appeal submitted to the OAA within fifteen (15) calendar days after entry of an Initial Order by an administrative judge, shall review the Initial Order. If the department on its own motion decides to review an Initial Order, it shall file its petition with the OAA and give written notice of its intention to review the Initial Order within fifteen (15) calendar days after its entry. Reviews of Initial Orders shall be conducted by the Commissioner's Designee.
- (2) Pursuant to T.C.A. § 4-5-315(b), the fifteen (15) calendar day periods referred to in the preceding paragraph shall be tolled by the submission of a timely petition for reconsideration of the Initial Order pursuant to T.C.A. § 4-5-317 and a new fifteen (15) calendar day period shall start to run upon disposition of the petition for reconsideration. If an Initial Order is subject both to a timely petition for reconsideration and to a petition for appeal or to review by the agency on its own motion, the petition for reconsideration shall be disposed of first, unless the agency determines that action on the petition for reconsideration has been unreasonably delayed.
- (3) The petition for appeal shall state the grounds upon which the appeal is based. If the department on its own motion gives notice of its intent to review an Initial Order, it shall identify the issues that it intends to review.
- (4) The Commissioner's Designee shall exercise all the decision-making power that the agency would have had to render a final order had the agency presided over the hearing, except to the extent that the issues subject to review are limited by rule or statute or by the agency upon notice to all parties.
- (5) Each party shall be afforded the opportunity to present briefs in accordance with a schedule established by the Commissioner's Designee, who may, but is not required to permit oral argument.
- (6) The department may cause a transcript to be prepared at its expense of such portions of the proceeding under review as are deemed necessary.
- (7) The Commissioner's Designee may render a Final Order disposing of the proceeding or may remand the matter for further proceeding with instructions to the administrative judge who rendered the Initial Order. Upon remanding a matter, the Commissioner's Designee may order such temporary relief as is authorized and appropriate.

- (8) A Final Order or an order remanding the matter for further proceedings shall be rendered and entered in writing within sixty (60) days after receipt of briefs and oral argument, if permitted, unless that period is waived or extended with the written consent of all parties or for good cause shown. The Final Order or an order remanding the matter for further proceedings shall be delivered to each party and to the administrative judge who conducted the contested case.
- (9) A Final Order, or an order remanding the matter for further proceedings, shall identify any difference between such order and the Initial Order, and shall include, or incorporate by express reference to the Initial Order, all requirements of T.C.A. § 4-5-314(c).

Authority: T.C.A. §§ 4-3-103, 4-3-2708, 4-5-101, et seq., 4-5-315, 4-5-317, 33-1-302, 33-1-303, 33-1-305, 33-1-309. Administrative History: Original rule filed \_\_\_\_\_, 2018, effective \_\_\_\_\_, 2018.

#### 0465-03-.19 Reconsideration of Initial or Final Order.

- (1) Any party, within fifteen (15) calendar days after entry of an Initial or Final Order may file a petition for reconsideration, stating the specific grounds upon which relief is requested. A petition for reconsideration of an Initial Order shall be filed with the APD. A petition for reconsideration of a Final Order shall be filed with the OAA.
- (2) The petition for reconsideration shall be disposed of by the same person who rendered the Initial or Final Order, if he or she is available.
- (3) The person who rendered the Initial or Final Order that is the subject of the petition shall, within twenty (20) calendar days of receiving the petition, enter a written order either denying the petition, granting the petition and setting the matter for further proceedings, or granting the petition and issuing a new order in accordance with T.C.A. § 4-5-314.
- (4) If no action has been taken on the petition within twenty (20) calendar days of filing, the petition shall be deemed to have been denied.
- (5) An order granting the petition and setting the matter for further proceedings shall state the extent and scope of the proceedings, which shall be limited to argument upon the existing record. No new evidence shall be introduced unless the party proposing such evidence shows good cause for the failure to introduce the evidence in the original proceeding.
- (6) The sixty (60) calendar day period for a party to file a petition for judicial review of a Final Order pursuant to T.C.A. § 4-5-322 shall be tolled if a petition for reconsideration is granted, and a new sixty (60) calendar day period shall begin to run upon disposition of the petition for reconsideration by issuance of a Final Order by the Commissioner's Designee.

Authority: T.C.A. §§ 4-3-103, 4-3-2708, 4-5-101, et seq., 4-5-314, 4-5-317, 4-5-322, 33-1-302, 33-1-303, 33-1-305, 33-1-309. Administrative History: Original rule filed \_\_\_\_\_, 2018, effective \_\_\_\_\_, 2018.

#### 0465-03-.20 Stay of Effectiveness of Final Order.

A party may file with the OAA a petition for stay of effectiveness of a Final Order issued by the Commissioner's Designee within seven (7) calendar days after its entry, unless otherwise provided by statute or stated in the Initial or Final Order. The department may take action on the petition for stay, either before or after the effective date of the Initial or Final Order.

Authority: T.C.A. §§ 4-3-103, 4-3-2708, 4-5-101, et seq., 4-5-316, 33-1-302, 33-1-303, 33-1-305, 33-1-309. Administrative History: Original rule filed \_\_\_\_\_, 2018, effective \_\_\_\_\_, 2018.

#### 0465-03-.21 Judicial Review of Final Order.

A person who is aggrieved by a final decision by the department in a contested case is entitled to judicial review by the appropriate Chancery Court by filing a petition with that court within sixty (60) calendar days after the entry of a Final Order by the department. Procedures for judicial review are governed by T.C.A. § 4-5-322.

Authority: T.C.A. §§ 4-3-103, 4-3-2708, 4-5-101, et seq., 4-5-322, 33-1-302, 33-1-303, 33-1-305, 33-1-309. Administrative History: Original rule filed \_\_\_\_\_, 2018, effective \_\_\_\_\_, 2018.

0465-03-.22 Clerical Mistakes.

- (1) Prior to any appeal being perfected by either party to the Commissioner's Designee or to the Chancery Court, clerical mistakes in orders or other parts of the record, and errors arising from oversight or omissions may be corrected at any time on motion of any party and after such notice, if any, as the reviewing official or administrative judge may require.
- (2) The entry of a corrected order will not affect the dates of the original appeal time period.

Authority: T.C.A. §§ 4-3-103, 4-3-2708, 4-5-101, et seq., 33-1-302, 33-1-303, 33-1-305, 33-1-309. Administrative History: Original rule filed \_\_\_\_\_, 2018, effective \_\_\_\_\_, 2018.

\* If a roll-call vote was necessary, the vote by the Agency on these rulemaking hearing rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the DIDD (board/commission/ other authority) on 7/6/2018 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 11/17/17

Rulemaking Hearing(s) Conducted on: (add more dates). 01/11/18

Date: July 6, 2018

Signature: Debra K Payne

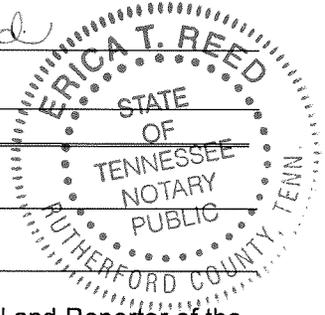
Name of Officer: Debra K. Payne

Title of Officer: Commissioner of Department of Intellectual and Developmental Disabilities

Subscribed and sworn to before me on: July 6, 2018

Notary Public Signature: Erica T. Reed

My commission expires on: 04/18/2021



Agency/Board/Commission: Department of Intellectual and Developmental Disabilities

Rule Chapter Number(s): 0465-03

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Herbert H. Slatery III  
 Herbert H. Slatery III  
 Attorney General and Reporter  
8/2/2018  
 Date

**Department of State Use Only**

Filed with the Department of State on: 8/6/18

Effective on: 11/4/18

Tre Hargett  
 Tre Hargett  
 Secretary of State

SECRETARY OF STATE

2018 AUG -6 PM 2:29

## G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Tennessee Board of Occupational Therapy

DIVISION:

SUBJECT: Renewal of License / Fees

STATUTORY AUTHORITY: Tennessee Code Annotated, §§ 63-1-107 and 63-13-204

EFFECTIVE DATES: November 5, 2018 through June 30, 2019

FISCAL IMPACT: Minimal

STAFF RULE ABSTRACT: The amendments to Rule 1150-02-.06 will decrease the biennial renewal fee for occupational therapists from \$\$110.00 to \$85.00 and will decrease the biennial renewal fee for occupational therapy assistants from \$80.00 to \$60.00.

Additionally, the amendments will consolidate the \$25.00 application, \$40.00 registration, and \$35.00 certificate fees into one \$100.00 application fee for occupational therapists and will consolidate the \$15.00 application, \$30.00 registration, and \$30.00 certificate fees into one \$75.00 application fee for occupational therapy assistants.

The amendment to Rule 1150-02-.09 will delete part (2)(a)1 to comply with 2016 Public Chapter 763, signed by the governor on April 4, 2016, now codified at Tennessee Code Annotated, § 63-1-107.

## **Public Hearing Comments**

One copy of a document that satisfies T.C.A. § 4-5-222 must accompany the filing.

There were no comments received, either written or oral.

## Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process, all agencies shall conduct a review of whether a proposed rule or rule affects small business.

- (1) **The extent to which the rule or rules may overlap, duplicate, or conflict with other federal, state, and local governmental rules.**

The proposed rule amendments do not overlap, duplicate, or conflict with other federal, state, and local government rules.

- (2) **Clarity, conciseness, and lack of ambiguity in the rule or rules.**

The proposed rule amendments are established with clarity, conciseness, and lack of ambiguity.

- (3) **The establishment of flexible compliance and/or reporting requirements for small businesses.**

The proposed rule amendments do not establish any new compliance and/or reporting requirements for small businesses.

- (4) **The establishment of friendly schedules or deadlines for compliance and/or reporting requirements for small businesses.**

The proposed rule amendments do not establish any new schedules or deadlines for compliance or reporting requirements for small businesses.

- (5) **The consolidation or simplification of compliance or reporting requirements for small businesses.**

The proposed rule amendments do not establish any new compliance or reporting requirements for small businesses.

- (6) **The establishment of performance standards for small businesses as opposed to design or operational standards required in the proposed rule.**

The proposed rule amendments do not establish any new performance standards for small businesses as opposed to design or operational standards required for the proposed rule.

- (7) **The unnecessary creation of entry barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs.**

The proposed rule amendments do not create unnecessary barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs.

## STATEMENT OF ECONOMIC IMPACT TO SMALL BUSINESSES

**Name of Board, Committee or Council:** Board of Occupational Therapy

**Rulemaking hearing date:** March 22, 2018

- 1. Type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, and/or directly benefit from the proposed rule:**

Occupational Therapists and Occupational Therapy Assistants, as well as those that employ them, such as hospitals, will be affected. These groups will benefit from the fee reductions and consolidations. Currently, there are two thousand six hundred and twenty-one (2,621) Occupational Therapists and one thousand four hundred and thirty-five (1,435) Occupational Therapy Assistants licensed by the Board of Occupational Therapy.

- 2. Projected reporting, recordkeeping and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record:**

The proposed rule amendments do not create any new reporting or recordkeeping requirements and do not create any new administrative costs.

- 3. Statement of the probable effect on impacted small businesses and consumers:**

The Board does not anticipate that there will be any adverse impacts to small businesses as small businesses could benefit from the fee reduction and consolidations. The proposed rule amendments should not have any impact on consumers.

- 4. Description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and/or objectives of the proposed rule that may exist, and to what extent, such alternative means might be less burdensome to small business:**

There are no less burdensome, less intrusive, or less costly methods of achieving the purpose and/or objectives of the proposed rule amendments. On the contrary, the proposed rule amendments could have a positive impact on business.

- 5. Comparison of the proposed rule with any federal or state counterparts:**

Federal: None.

State: Many Health Related Boards in Tennessee currently operating at a surplus are reducing some licensure fees, including the Board of Respiratory Care and the Board of Examiners in Psychology. Additionally, many boards do not charge separate fees for applications, registration, and certificates, including the Board of Athletic Trainers, the Board of Chiropractic Examiners, the Board of Dietician/Nutritionist Examiners, the Board of Medical Examiners, and the Board of Optometry.

- 6. Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule.**

The proposed rule amendments do not provide exemptions for small businesses.

**Additional Information Required by Joint Government Operations Committee**

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A)** A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

The amendments to Rule 1150-02-.06 will decrease the biennial renewal fee for Occupational Therapists from \$110.00 to \$85.00 and will decrease the biennial renewal fee for Occupational Therapy Assistants from \$80.00 to \$60.00.

Additionally, the amendments will consolidate the \$25.00 Application, \$40.00 Registration, and \$35.00 Certificate fees into one \$100.00 Application fee for Occupational Therapists and will consolidate the \$15.00 Application, \$30.00 Registration, and \$30.00 Certificate fees into one \$75.00 Application fee for Occupational Therapy Assistants.

The amendment to Rule 1150-02-.09 will delete part (2)(a)1 to comply with 2016 Public Chapter 763, signed by the Governor on April 4, 2016, now codified in T.C.A. § 63-1-107.

- (B)** A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

T.C.A. §§ 63-1-107 and 63-13-204.

- (C)** Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

Occupational Therapists and Occupational Therapy Assistants, as well as those that employ them, such as hospitals, will be affected by these rule amendments.

- (D)** Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule or the necessity to promulgate the rule;

None.

- (E)** An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

These rules should not significantly affect state or local government revenues or expenditures.

- (F)** Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Lara Gill, Assistant General Counsel, Department of Health.

- (G)** Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Lara Gill, Assistant General Counsel, Department of Health.

- (H)** Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Office of General Counsel, Department of Health, 665 Mainstream Drive, Nashville, Tennessee 37243, (615) 741-1611, Lara.Gill@tn.gov.

(l) Any additional information relevant to the rule proposed for continuation that the committee requests.

None.

**Department of State  
Division of Publications**

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Nashville, TN 37243  
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**For Department of State Use Only**

Sequence Number: 08-04-18  
Rule ID(s): 7222  
File Date: 8/7/18  
Effective Date: 11/5/18

# Rulemaking Hearing Rule(s) Filing Form

*Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing (Tenn. Code Ann. § 4-5-205).*

*Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).*

**Agency/Board/Commission:** Tennessee Board of Occupational Therapy  
**Division:**  
**Contact Person:** Lara Gill, Assistant General Counsel  
**Address:** 665 Mainstream Drive, Nashville, Tennessee  
**Zip:** 37243  
**Phone:** (615) 741-1611  
**Email:** [Lara.Gill@tn.gov](mailto:Lara.Gill@tn.gov)

**Revision Type (check all that apply):**

- Amendment  
 New  
 Repeal

**Rule(s)** (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that ALL new rule and repealed rule numbers are listed in the chart below. Please enter only ONE Rule Number/Rule Title per row)

Chapter Number	Chapter Title
1150-02	General Rules Governing the Practice of Occupational Therapy
Rule Number	Rule Title
1150-02-.06	Fees
1150-02-.09	Renewal of License

(Rule 1150-02-.05 continued)

2005. Amendment filed March 14, 2006; effective May 28, 2006. Amendment filed April 17, 2007; effective July 1, 2007. Amendment filed August 28, 2012; effective November 26, 2012.

**1150-02-.06 FEES.**

(1) The fees are as follows:

- (a) Application fee - A nonrefundable fee to be paid by all applicants including those seeking licensure by reciprocity. It must be paid each time an application for licensure is filed.
- (b) Endorsement/Verification - A fee paid whenever an individual requests the board endorse him to another state or whenever a request is made to verify a certificate.
- (c) Late Renewal Fee - A nonrefundable fee to be paid when an individual fails to timely renew a certificate.
- (d) Limited Permit Fee - A nonrefundable fee to be paid when an individual requests a limited permit.
- ~~(e) Initial License Fee - To be paid prior to the issuance of the "artistically designed" license.~~
- ~~(e)(f) Renewal fee - To be paid by all license holders. This fee also applies to individuals who reactivate a retired or lapsed license.~~
- ~~(f)(g) Duplicate License Fee - To be paid when an individual requests a replacement for a lost or destroyed "artistically designed" license.~~
- ~~(h) State Regulatory Fee - To be paid by all individuals at the time of application and with all renewal applications.~~
- (g) State Regulatory Fee - To be paid by all individuals at the time of application and with all renewal applications pursuant to Tenn. Code Ann. § 9-4-5117.
- ~~(i) Registration fee - A one time fee to be paid by initial license holders for issuance of a certificate of registration from the Division.~~
- ~~(h)(i) Inactive License Fee - A nonrefundable fee to be paid each time a licensee requests an Inactive License, and every two (2) years thereafter until reactivation is requested.~~

(2) All fees shall be established, reviewed and changed by the Board, as appropriate.

(3) All fees must be submitted to the Board's administrative office by certified or personal check or money order. Checks or money orders are to be made payable to the Board of Occupational Therapy.

(4) Fee Schedule:	OT	OTA
(a) Application	\$ 25.00	\$ 15.00
(b) Duplicate License	\$ 25.00	\$ 25.00
(c) Endorsement/Verification	\$ 25.00	\$ 25.00

(Rule 1150-02-.06, continued)

(d) Late Renewal Fee	\$ 15.00	\$ 15.00
(e) Limited Permit	\$ 25.00	\$ 25.00
(f) Renewal (biennial)	\$110.00	\$ 80.00
(g) Registration	\$ 40.00	\$ 30.00
(h) State Regulatory Fee (biennial)	\$ 10.00	\$ 10.00
(i) Certificate Fee	\$ 35.00	\$ 30.00
(j) Inactive License (biennial)	\$ 25.00	\$ 25.00
(4) Fee Schedule:	OT	OTA
(a) Application	\$ 100.00	\$ 75.00
(b) Duplicate License	\$ 25.00	\$ 25.00
(c) Endorsement/Verification	\$ 25.00	\$ 25.00
(d) Late Renewal Fee	\$ 15.00	\$ 15.00
(e) Limited Permit	\$ 25.00	\$ 25.00
(f) Renewal (biennial)	\$ 85.00	\$ 60.00
(g) State Regulatory Fee (biennial)	\$ 10.00	\$ 10.00
(h) Inactive License (biennial)	\$ 25.00	\$ 25.00

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**Authority:** T.C.A. §§ 4-3-1011, 4-5-102, 4-5-202, 4-5-204, 9-4-5117, 63-1-106, 63-1-107, 63-1-118, 63-13-104, 63-13-108, 63-13-202, 63-13-203, 63-13-204, 63-13-205, 63-13-211, and 63-13-215.  
**Administrative History:** Original rule filed March 15, 1996; effective May 29, 1996. Amendment filed April 17, 2003; effective July 1, 2003. Amendment filed October 11, 2005; effective December 25, 2005. Amendment filed August 18, 2006; effective November 1, 2006. Amendment filed April 17, 2007; effective July 1, 2007. References to Board of Occupational and Physical Therapy Examiners has been changed by The Secretary of State to the Applicable entity; Board of Occupational Therapy and/or Board of Physical Therapy pursuant to Public Chapter 115 of the 2007 Session of the Tennessee General Assembly.

**1150-02-.07 APPLICATION REVIEW, APPROVAL AND DENIAL.**

- (1) An application packet shall be requested from the Board's administrative office.
- (2) Applications for licensure will be accepted throughout the year and completed files will be ordinarily processed at the next Board meeting scheduled for the purpose of reviewing files.
- (3) Initial review of all applications to determine whether or not the application file is complete may be delegated to the Board's administrator, provided that final approval of all applications is made and ratified by the Board. In no event may an application be approved or denied without prior review by a member of the Board.

(Rule 1150-02-.07, continued)

- (9) If an applicant requests an entrance for licensure and, after Board review, wishes to change that application to a different type of entrance, a new application with supporting documents and an additional application fee must be submitted, i.e., reciprocity to examination.

**Authority:** T.C.A. §§ 4-5-202, 4-5-204, 63-13-104, 63-13-108, 63-13-202, 63-13-203, 63-13-204, 63-13-207, 63-13-209, and 63-13-210. **Administrative History:** Original rule filed March 15, 1996; effective May 29, 1996. Amendment filed October 11, 2005; effective December 25, 2005.

**1150-02-.08 EXAMINATIONS.** In addition to having filed an application, an individual seeking licensure shall be required to pass an examination.

- (1) Occupational Therapist examination adopted by the Board:
  - (a) The examination shall be the National Board for Certification in Occupational Therapy Examination or its successor exam administered by the National Board for Certification in Occupational Therapy. The board adopts the passing scores as set by the National Board for Certification in Occupational Therapy. Examination scores are provided automatically, directly to the candidate by the National Board for Certification in Occupational Therapy.
  - (b) Examinations taken prior to January, 1985 - The applicant shall request the National Board for Certification in Occupational Therapy send a verification of certification examination results to the Board of Occupational Therapy.
  - (c) Examinations taken in January, 1985, or later - The applicant shall request that Professional Exam Service send verification of certification examination results to the Board of Occupational Therapy.
- (2) Occupational Therapy Assistant Examination adopted by the Board:
  - (a) The examination shall be the National Board for Certification in Occupational Therapy Examination or its successor examination administered by the National Board for Certification in Occupational Therapy. The board adopts the passing scores as set by the National Board for Certification in Occupational Therapy. Examination scores are provided automatically, directly to the candidate by the National Board for Certification in Occupational Therapy.
  - (b) Examinations taken prior to January, 1985 - The applicant shall request the National Board for Certification in Occupational Therapy send a verification of certification examination results to the Board of Occupational Therapy.
  - (c) Examinations taken in January, 1985, or later - The applicant shall request that Professional Exam Service send verification of certification examination results to the Board of Occupational Therapy.

**Authority:** T.C.A. §§ 4-5-202, 4-5-204, 63-13-104, 63-13-108, 63-13-202, and 63-13-203. **Administrative History:** Original rule filed March 15, 1996; effective May 29, 1996. Amendments filed March 10, 2005; effective May 24, 2005. Amendment filed October 11, 2005; effective December 25, 2005.

**1150-02-.09 RENEWAL OF LICENSE.**

- (1) Renewal Application

(Rule 1150-02-.09, continued)

- (a) The due date for licensure renewal is the last day of the month in which a licensee's birthday falls pursuant to the Division of Health Related Boards "birthdate renewal system" contained on the renewal certificate as the expiration date.
  - (b) Methods of Renewal
    - 1. Internet Renewals - Individuals may apply for renewal and pay the necessary fees via the Internet. The application to renew can be accessed at:  

[www.tennesseeanytime.org](http://www.tennesseeanytime.org)
    - 2. Paper Renewals - For individuals who have not renewed their license online via the Internet, a renewal application form will be mailed to each individual licensed by the Board to the last address provided to the Board. Failure to receive such notification does not relieve the licensee from the responsibility of meeting all requirements for renewal.
  - (c) A license issued pursuant to these rules is renewable by the expiration date indicated on the renewal certificate. To be eligible for renewal, an individual must submit to the Division of Health Related Boards on or before the expiration date all of the following:
    - 1. A completed and signed board renewal application form; and
    - 2. The renewal and state regulatory fees as provided in Rule 1150-02-.06; and
    - 3. A statement attesting to the completion of continued competence requirements, as provided in Rule 1150-02-.12.
  - (d) Licensees who fail to comply with the renewal rules or notification received by them concerning failure to timely renew shall have their licenses processed pursuant to rule 1200-10-01-.10.
  - (e) Anyone submitting a signed renewal form or letter which is found to be untrue may be subjecting himself to disciplinary action as provided in Rule 1150-02-.15.
- (2) Reinstatement of Expired License
- (a) Reinstatement of an expired license may be accomplished upon meeting the following conditions:
    - 1. ~~Payment of all past due renewal and State regulatory fees;~~
    - 1. Payment of the current renewal fee and state mandated fees in Rule 1150-02-.06;
    - 2. Payment of the late renewal fee in Rule 1150-02-.06; and
    - 3. Submitting proof of completion of continued competence requirements, as provided in Rule 1150-02-.12.
  - (b) Anyone submitting a signed reinstatement application which is found to be untrue may be subjecting himself to disciplinary action as provided in Rule 1150-02-.15.
- (3) Renewal issuance decisions pursuant to this rule may be made administratively or upon review by any Board member or the Board's designee.

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Tab stops: Not at 0.38"

(Rule 1150-02-.09, continued)

**Authority:** T.C.A. §§ 4-5-202, 4-5-204, 63-1-107, 63-13-104, 63-13-108, 63-13-204, 63-13-207, 63-13-209, 63-13-210, and 63-13-213. **Administrative History:** Original rule filed March 15, 1996; effective May 29, 1996. Amendment filed July 29, 2002; effective October 12, 2002. Amendment filed March 24, 2005; effective June 7, 2005. Amendment filed October 11, 2005; effective December 25, 2005.

**1150-02-10 SUPERVISION.** The Board adopts, as if fully set out herein, and as it may from time to time be amended, the current "Guidelines for Supervision, Roles, and Responsibilities During the Delivery of Occupational Therapy Services" issued by the American Occupational Therapy Association but only to the extent that it agrees with the laws of the state of Tennessee or the rules of the Board. If there are conflicts with state law or rules, the state law or rules govern the matter. Information to acquire a copy may be obtained by contacting either of the following:

American Occupational Therapy Association  
4720 Montgomery Lane  
Bethesda, MD 20824-1220  
Telephone: (301) 652-2682  
T.D.D.: (800) 377-8555  
Fax: (301) 652-7711  
Fax On Request: (800) 701-7735 (for a specific document)  
Internet: [www.aota.org](http://www.aota.org)

Board of Occupational Therapy  
665 Mainstream Drive  
Nashville, TN 37243  
Telephone: (615) 532-3202 ext. 25135  
Telephone: (888) 310-4650 ext. 25135  
Fax: (615) 532-5164  
Internet: [www.state.tn.us/health](http://www.state.tn.us/health)

- (1) Supervision of an Occupational Therapist on a limited permit must include initial and routine inspection of written evaluations, written treatment plans, patient/client notes and routine evaluation of performance. The supervision must be conducted in person, by a licensed occupational therapist and must be as follows:
  - (a) Routine supervision with direct contact every 2 weeks at the site of treatment, with interim supervision occurring by other methods such as the telephone, conferences, written communication, and E-mail.
  - (b) Supervision must include observation of the individual treatment under a limited permit in order to assure service competency in carrying out evaluation, treatment planning and treatment implementation.
  - (c) The frequency of the face to face collaboration between the person treating under a limited permit and the supervising therapist should exceed direct contact every 2 weeks if the condition of the patient/client, complexity of treatment, evaluation procedures, and proficiencies of the person practicing under the limited permit warrants it.
  - (d) Therapists must maintain documentation of each supervisory visit, and must identify a plan for continued supervision. Records must include, at a minimum, the following information:
    1. Location of visit; a method of identifying clients discussed
    2. Current plan for supervision (daily, weekly, bi-monthly)

\* If a roll-call vote was necessary, the vote by the Agency on these rulemaking hearing rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Anita M. Tisdale	X				
Marilyn D. Franklin				X	
Anita Witt Mitchell	X				
Amanda D. Newbern	X				
William A. Daniel	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Board of Occupational Therapy (board/commission/ other authority) on 03/22/2018 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 09/12/17 (mm/dd/yy)

Rulemaking Hearing(s) Conducted on: (add more dates). 03/22/18 (mm/dd/yy)

Date: July 5, 2018 7/5/18

Signature: Lara E. Gill

Name of Officer: Lara Gill

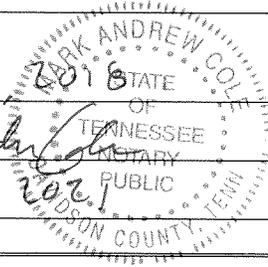
Assistant General Counsel

Title of Officer: Department of Health

Subscribed and sworn to before me on: July 5, 2018

Notary Public Signature: [Signature]

My commission expires on: March 8, 2021



Agency/Board/Commission: Tennessee Board of Occupational Therapy

Rule Chapter Number(s): 1150-02

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Herbert H. Slatery III

Herbert H. Slatery III

Attorney General and Reporter

8/1/2018

Date

Department of State Use Only

Filed with the Department of State on: 01/7/18

Effective on: 11/5/18

*Tre Hargett*

Tre Hargett  
Secretary of State

RECEIVED  
2018 AUG -7 PM 3:57  
SECRETARY OF STATE

## G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Emergency Communications Board

SUBJECT: Board meetings / Special Distributions

STATUTORY AUTHORITY: There are no federal laws or regulations mandating any of these rules. Tennessee Code Annotated, Section 7-86-306(a)(1) authorizes the board to promulgate rules for the conduct of the affairs of the board.

EFFECTIVE DATES: November 26, 2018 to June 30, 2019

FISCAL IMPACT: Minimal

STAFF RULE ABSTRACT: These permanent rules set forth the procedures for board actions authorizing special distributions of board funds.

1 STATE OF TENNESSEE  
2 DEPARTMENT OF COMMERCE AND INSURANCE

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11 **EMERGENCY COMMUNICATIONS BOARD**

12 **June 7, 2018**

13 **RULEMAKING HEARING**  
14

15  
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18  
19  
20  
21 Ad Litem Reporting  
22 117 Arrowhead Drive  
23 Hendersonville, Tennessee 37075  
24 (615) 415-5556  
25 dl\_stacy@bellsouth.net

Reported by: Denise Stacy, LCR

Ad Litem Reporting  
(615) 415-5556

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APPEARANCES:

For the Emergency Communications Board:

Benjamin Paul Glover  
General Counsel  
Emergency Communications Board  
Davy Crockett Tower  
500 James Robertson Parkway  
Nashville, Tennessee 37243

Agency Representative:

Curtis S. Sutton  
Board Executive Director  
Davy Crockett Tower  
500 James Robertson Parkway  
Nashville, Tennessee 37243

1 MR. GLOVER: This rulemaking hearing  
2 is called to order. My name is Benjamin Paul Glover,  
3 and I serve as the Assistant Director and General  
4 Counsel for the Emergency Communications Board in the  
5 Department of Commerce and Insurance.

6 Would the agency representatives who  
7 are present introduce themselves for the record?

8 MR. SUTTON: I'm Curtis Sutton the  
9 Executive Director of the Tennessee Emergency  
10 Communications Board.

11 MR. GLOVER: Thank you.

12 Today is Thursday, June 7th, 2018.  
13 This rulemaking hearing is taking place pursuant to  
14 Tennessee Code Annotated Section 4-5-204 in Room 1-A  
15 of the Davy Crockett Tower, 500 James Robertson  
16 Parkway, Nashville, Tennessee.

17 The purpose of this rulemaking  
18 hearing is to solicit comments of proposed rules the  
19 Tennessee Emergency Communications Board has made  
20 public in order to set forth the specific board meeting  
21 procedures to ensure transparency of board actions  
22 regarding special distributions of board funds.

23 A rule is defined as an agency  
24 statement of general applicability that implements or  
25 prescribes law or policy or describes the procedures

1 or practice requirements of the agency.

2 Proposed rules are filed at the  
3 Office of the Secretary of State, notice is given to  
4 the public for comment, and a rulemaking hearing is  
5 held.

6 Upon conclusion of the hearing and  
7 the adoption of the proposed rules, the rules are  
8 forwarded to the Attorney General's Office for review  
9 of legality. If approved, they are filed with the  
10 Secretary of State, which is responsible for  
11 publication, and the Government Operations Committee  
12 of the General Assembly.

13 The rules must stay in the Secretary  
14 of State's office for 90 days, and at the end of which  
15 time would be the effective date.

16 Those members of the public wishing  
17 to speak should sign up at the table at the front of  
18 the room. Only those who have signed up will be  
19 permitted to speak.

20 The Notice of Rulemaking Hearing  
21 included the entire text of the proposed rules and was  
22 published on the Tennessee Administrative Register  
23 Web site on April 12th, 2018. Additional notice was  
24 given to the affected individuals or groups on May 8th  
25 and May 24th, 2018.

1                   As the agency hears public comment on  
2 the proposed rules, I, as moderator, reserve the right  
3 to limit such comments if they become repetitive.  
4 Please limit your comments accordingly.

5                   I'll read summaries of the proposed  
6 rules into the record, and I will ask the court  
7 reporter to enter the Notice or Rulemaking Form SS-7037  
8 into the record as an exhibit.

9                   (Exhibit 1, Notice of Rulemaking  
10                   Hearing, entered into the record.)

11                   MR. GLOVER: Rule 0780-06-05.01,  
12 Purpose, is going to be created to state the function  
13 of the new chapter or rules that is to provide greater  
14 public comment at board meetings and more transparency  
15 regarding special distributions of board funds.

16                   And, actually, that's an error. It's  
17 not "greater public comment"; it's just greater  
18 transparency regarding special distributions of board  
19 funds.

20                   Rule 0780-06-05-.02, Definitions, is  
21 going to be created to provide definitions for the term  
22 "special distribution" as used in this chapter of the  
23 rules.

24                   And the last rule, 0780-06-05-.03,  
25 Special Distributions, is created to set forth the

1 Board's procedures regarding special distributions of  
2 board funds to the districts.

3 Are there any public comments?

4 (Pause)

5 MR. GLOVER: No one has signed up on  
6 the public comment sheet. Also, there were no written  
7 public comments submitted by the date of this hearing.  
8 Therefore, I don't see any reason to continue this  
9 hearing going on. So we will conclude this hearing  
10 today.

11 Thank you-all for being here.

12 (End of the rulemaking hearing.)

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REPORTER'S CERTIFICATE

STATE OF TENNESSEE )  
COUNTY OF SUMNER )

I, Denise Stacy, licensed court reporter  
in the state of Tennessee,

DO HEREBY CERTIFY that the foregoing  
transcript of the proceedings was taken on the date  
and place set forth in the caption thereof; that the  
proceedings were reported by me in machine shorthand;  
and the foregoing proceedings constitute a true and  
correct transcript of said proceedings to the best of  
my skills and ability.

I FURTHER CERTIFY that I am not related  
to any of the parties named herein, nor their counsel,  
and have no interest, financial or otherwise, in the  
outcome of these proceedings.

Signed the 9th day of July, 2018.

---

Denise Stacy, LCR #308  
Licensed Court Reporter  
State of Tennessee

My License Expires: June 30, 2020.

## Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process, all agencies shall conduct a review of whether a proposed rule or rule affects small business.

1. The type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, or directly benefit from the proposed rule:  
  
The proposed rules are not expected to affect any small businesses.
2. The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record:  
  
The rules do not impose any new requirements for reporting or recordkeeping for any emergency communications districts.
3. A statement of the probable effect on impacted small businesses and consumers:  
  
Consumers and small businesses will likely benefit from the clarification of these rules which will increase transparency regarding special distributions of board funds to emergency communications districts.
4. A description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and objectives of the proposed rule that may exist, and to what extent the alternative means might be less burdensome to small business:  
  
The proposed rules are not burdensome or intrusive to small businesses. There are no known less intrusive or less costly alternative methods. Rather, the rules seek to allow increased transparency of Board actions.
5. A comparison of the proposed rule with any federal or state counterparts:  
  
There are no federal or state counterparts to the issues addressed by these rules.
6. Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule:  
  
The rules do not impose any new requirements on small businesses.

## **Impact on Local Governments**

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 “any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments.” (See Public Chapter Number 1070 (<http://publications.tnsosfiles.com/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

The proposed rules are not expected to have any impact on local governments.

**Additional Information Required by Joint Government Operations Committee**

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

These rules set forth the procedures for board actions authorizing special distributions of board funds.

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

There are no federal laws or regulations mandating any of these rules. T.C.A. § 7-86-306(a)(1) authorizes the board to promulgate rules and regulations for the conduct of the affairs of the board.

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

Emergency communications districts are most directly affected by this rule.

- (D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule or the necessity to promulgate the rule;

There are no known attorney general opinions or judicial rulings which directly relate to this rule.

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

There is no indication that there will be any increase or decrease in state and local government revenues and expenditures as a result of the promulgation of this rule. If there is any increase or decrease, such change will be less than two percent (2%) of the agency's annual budget.

- (F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Benjamin Glover, Assistant Director & General Counsel – Tennessee Emergency Communications Board

- (G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Benjamin Glover, Assistant Director & General Counsel – Tennessee Emergency Communications Board

- (H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Benjamin Glover  
Assistant Director & General Counsel  
Tennessee Emergency Communications Board  
500 James Robertson Parkway, 11<sup>th</sup> Floor  
Nashville, TN 37243  
615-770-3849  
[benjamin.glover@tn.gov](mailto:benjamin.glover@tn.gov)

- (I) Any additional information relevant to the rule proposed for continuation that the committee requests.

There is no additional information relevant to the rule requested.

**Department of State  
Division of Publications**

312 Rosa L. Parks Ave., 8th Floor, Snodgrass/TN Tower  
Nashville, TN 37243  
Phone: 615-741-2650  
Email: [publications.information@tn.gov](mailto:publications.information@tn.gov)

**For Department of State Use Only**

Sequence Number: 08-29-18  
Rule ID(s): 7234  
File Date: 8/28/18  
Effective Date: 11/26/18

# Rulemaking Hearing Rule(s) Filing Form

*Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing (Tenn. Code Ann. § 4-5-205).*

*Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).*

**Agency/Board/Commission:** Tennessee Emergency Communications Board  
**Division:** Department of Commerce and Insurance  
**Contact Person:** Benjamin Glover  
**Address:** 500 James Robertson Parkway, 11<sup>th</sup> Floor, Nashville, TN  
**Zip:** 37243  
**Phone:** 615-770-3849  
**Email:** [Benjamin.Glover@tn.gov](mailto:Benjamin.Glover@tn.gov)

**Revision Type (check all that apply):**

- Amendment
- New
- Repeal

**Rule(s)** (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that **ALL** new rule and repealed rule numbers are listed in the chart below. Please enter only **ONE** Rule Number/Rule Title per row)

Chapter Number	Chapter Title
0780-06-05	Board Meetings
Rule Number	Rule Title
0780-06-05-.01	Purpose
0780-06-05-.02	Definitions
0780-06-05-.03	Special Distributions

**Department of State**  
**Division of Publications**  
 312 Rosa L. Parks Ave., 8th Floor, Snodgrass/TN Tower  
 Nashville, TN 37243  
 Phone: 615-741-2650  
 Email: [publications.information@tn.gov](mailto:publications.information@tn.gov)

**For Department of State Use Only**

Sequence Number: \_\_\_\_\_  
 Rule ID(s): \_\_\_\_\_  
 File Date: \_\_\_\_\_  
 Effective Date: \_\_\_\_\_

# Rulemaking Hearing Rule(s) Filing Form

## REDLINE

*Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing (Tenn. Code Ann. § 4-5-205).*

*Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).*

**Agency/Board/Commission:** Tennessee Emergency Communications Board  
**Division:** Department of Commerce and Insurance  
**Contact Person:** Benjamin Glover  
**Address:** 500 James Robertson Parkway, 11<sup>th</sup> Floor, Nashville, TN  
**Zip:** 37243  
**Phone:** 615-770-3849  
**Email:** [Benjamin.Glover@tn.gov](mailto:Benjamin.Glover@tn.gov)

**Revision Type (check all that apply):**

Amendment  
 New  
 Repeal

**Rule(s)** (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that **ALL** new rule and repealed rule numbers are listed in the chart below. Please enter only **ONE** Rule Number/Rule Title per row)

Chapter Number	Chapter Title
0780-06-05	Board Meetings
Rule Number	Rule Title
0780-06-05-.01	Purpose
0780-06-05-.02	Definitions
0780-06-05-.03	Special Distributions

Place substance of rules and other info here. Please be sure to include a detailed explanation of the changes being made to the listed rule(s). Statutory authority must be given for each rule change. For information on formatting rules go to [http://sos-tn-gov-files.s3.amazonaws.com/forms/Rulemaking%20Guidelines\\_September2016.pdf](http://sos-tn-gov-files.s3.amazonaws.com/forms/Rulemaking%20Guidelines_September2016.pdf).

## New Rules

0780-06-05 [Board Meetings] is added as a new chapter, with the following language as new rules and shall read as follows:

Rules  
Of  
Department Of Commerce And Insurance  
Emergency Communications Board

Chapter 0780-06-05  
Board Meetings

Table of Contents

<u>0780-06-05-.01</u>	<u>Purpose</u>	<u>0780-06-05-.03</u>	<u>Special Distributions</u>
<u>0780-06-05-.02</u>	<u>Definitions</u>		

Rule 0780-06-05-.01 Purpose.

The purpose of this chapter is to set forth the specific board meeting procedures to ensure transparency of board actions regarding special distributions of board funds.

Authority: T.C.A. §§ 7-86-302, 7-86-303, and 7-86-306(a)(1).

Rule 0780-06-05-.02 Definitions.

- (1) In this chapter, unless the context requires otherwise, the definitions in Tenn. Code Ann. § 7-86-103 shall apply.
- (2) Unless otherwise stated, as used in this chapter and each subsequent chapter of the Rules of the Emergency Communications Board, "special distribution" means a one-time, non-recurring distribution of funds authorized by the board and made to all districts that is not a base amount distribution, an excess distribution, or a reimbursement for expenditures or payment of obligations incurred to implement, operate, maintain, or enhance statewide wireless enhanced 911 service.

Authority: T.C.A. §§ 7-86-128, 7-86-130, 7-86-303, and 7-86-306(a)(1).

Rule 0780-06-05-.03 Special Distributions.

- (1) The board may authorize special distributions to all ECDs from the 911 Emergency Communications Fund.
- (2) Any such special distributions authorized by the board, regardless of the total dollar amount, shall be allocated to the ECDs in the same manner as base amount distribution pursuant to Tenn. Code Ann. § 7-86-303(e) in that each district shall receive a proportionate share of the authorized special distribution in an amount equal to the district's proportionate share of the annual base amount distribution. For example, if a district receives 1% of the total base funding, that district shall receive 1% of the special distribution.

(3) The board shall provide public notice indicating the board's intent to authorize a special distribution. The public notice shall:

(a) Be provided to all ECDs and published on the board's website no less than thirty (30) days prior to the next scheduled meeting of the board; and

(b) Contain an appended table, for reference, containing the distributions each ECD would receive under three (3) different total amounts of special distributions.

Authority: T.C.A. §§ 7-86-128, 7-86-130, 7-86-302, 7-86-303, and 7-86-306(a)(1).

\* If a roll-call vote was necessary, the vote by the Agency on these rulemaking hearing rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Greg Cothron	X				
Jennifer Estes	X				
Hon. Jill Holland				X	
Mike Hooks				X	
Marvin Kelley	X				
Bob McNeill	X				
Phillip Noel	X				
James Sneed	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Emergency Communications Board (board/commission/ other authority) on 11/01/2017 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 04/12/18

Rulemaking Hearing(s) Conducted on: (add more dates). 06/07/18

Date: 8/21/2018

Signature: [Handwritten Signature]

Name of Officer: Benjamin Paul Glover

Title of Officer: Assistant Director & General Counsel



Subscribed and sworn to before me on: August 2, 2018

Notary Public Signature: [Handwritten Signature]

My commission expires on: May 6, 2019

Agency/Board/Commission: Tennessee Emergency Communications Board

Rule Chapter Number(s): 0780-06-05-.01, 0780-06-05-.02, 0780-06-05-.03

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

[Handwritten Signature]  
 Herbert H. Slatery III  
 Attorney General and Reporter  
8/17/2018  
 Date

Department of State Use Only

Filed with the Department of State on: 8/28/18

Effective on: 11/26/18



Tre Hargett  
Secretary of State

**Public Hearing Comments**

One copy of a document that satisfies T.C.A. § 4-5-222 must accompany the filing.

A copy of the hearing transcript accompanies this filing. There were no writing comments submitted or oral comments made with regard to this filing.

PROCEEDINGS  
2019 AUG 28 AM 8:13  
SECRETARY OF STATE  
FUG119419095

## G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: State Board of Education

DIVISION:

SUBJECT: Special Education Programs and Services

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 49-10-101

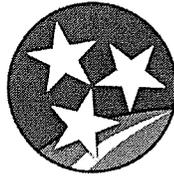
EFFECTIVE DATES: November 11, 2018 through June 30, 2019

FISCAL IMPACT: N/A

STAFF RULE ABSTRACT: Chapter 0520-01-09 governs the State's special education program. In addition, the provision of special education services, specifically the provision of Individualized Education Programs (IEPs), is governed by the federal rules and regulations contained in 34 C.F.R. §§ 300.320 – 300-323. The State Board amended rule 0520-01-09-.15, which governs Parent Participation, to include a provision that if a local education agency prepares a draft IEP in advance of the IEP meeting, then a copy must be provided to the parent(s) at least 48 hours prior to the meeting, unless the parent opts out of receiving a draft.

## Public Hearing Comments

Please see attached document.



**TENNESSEE**  
STATE BOARD OF EDUCATION

**RESPONSE TO COMMENTS AT RULEMAKING HEARING**

The Tennessee State Board of Education held a public rulemaking hearing on Rule 0520-01-09-.15 of the Tennessee State Board of Education, Special Education Programs and Services – Parent Participation. The hearing was held on March 22, 2018, at 9:30 a.m. CDT at the Davey Crockett Tower – Conference Room 1C, 500 James Robertson Parkway, Nashville, Tennessee 37243. The changes to the rule on first reading were proposed by the staff of the State Board of Education in response to feedback a Board member received regarding parents being presented with a draft Individualized Education Program (IEP) at IEP team meetings and not having sufficient time to review the document. Public comments on the rule change were obtained through the rulemaking hearing in addition to written comments.

The comments by those opposed to the rule change focused on the following issues:

- May appear to be a predetermination of eligibility;
- May result in fewer parents attending IEP meetings as the perception would be that the IEP is already completed;
- May send information that is confusing to parents without having immediate access to the professionals that can interpret that information;
- May discourage LEAs from creating drafts, which would lead to less structured meetings and a greater chance for errors;
- May result in LEAs having to hold separate IEP meetings, which could delay initial services up to 30 days after initial eligibility, in order to give time to have a draft ready;
- No means of documenting LEAs' compliance;
- Places undue paperwork burden on already paperwork-heavy SPED teachers; and
- Meetings may start with an adversarial tone.

Those comments in favor of the rule change highlighted the following:

- Drafts are necessary for active, equal, full participation;
- Under the Federal Education Right to Privacy Act parents entitled to records;
- Time needed to read and digest a large amount of paperwork and evaluation results;
- Parents need time to consult with advocates and experts;
- Not providing advanced drafts contributes to the following for parents:
  - Anxiety at meetings
  - Feeling overwhelmed
  - Adversarial relationship with school team;
- Evens the playing field a little and makes the parents more able team players; and
- Parents will be more informed and prepared which will be a better use of everyone's time and produce better outcomes for students.

In response to the feedback received, the Board made additional changes to the rule on final read. The amendments approved by the Board on final read state that *if* a draft IEP is created prior to the IEP team meeting, it shall be provided to the parent(s) at least 48 hours prior to the meeting unless the parent opts out of receiving it.

### **Regulatory Flexibility Addendum**

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rulemaking process, all agencies shall conduct a review of whether a proposed rule or rule affects small business.

This rule does not affect small businesses.

### **Impact on Local Governments**

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (<http://publications.tnsosfiles.com/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

This rule will not have a projected impact on local governments.

**Additional Information Required by Joint Government Operations Committee**

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

Chapter 0520-01-09 governs the State's special education program. In addition, the provision of special education services, specifically the provision of Individualized Education Programs (IEPs), is governed by the federal rules and regulations contained in 34 C.F.R. §§ 300.320 - 300.323. The State Board amended rule 0520-01-09-.15, which governs Parent Participation, to include a provision that if a local education agency prepares a draft IEP in advance of the IEP meeting, then a copy must be provided to the parent(s) at least 48 hours prior to the meeting, unless the parent opts out of receiving a draft.

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

T.C.A. § 49-10-101 provides that the state board shall adopt rules and regulations to implement the state's special education program.

The commentary to 34 C.F.R. §§ 300.320 - 300.323 states, "[I]f a public agency develops a draft IEP prior to the IEP Team meeting, the agency should make it clear to the parents at the outset of the meeting that the services proposed by the agency are preliminary recommendations for review and discussion with the parents. The public agency also should provide the parents with a copy of its draft proposals, if the agency has developed them, prior to the IEP Team meeting so as to give the parents an opportunity to review the recommendations of the public agency prior to the IEP Team meeting, and be better able to engage in a full discussion of the proposals for the IEP."

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

Disabled students, their parents, and their educators are most directly affected by this rule. They were able to voice their concerns via oral and written comments urging adoption of the rule according to their comments. (See response to comments document attached hereto.)  
The Tennessee Association for Administrators in Special Education initially urged rejection of this rule as approved by the board, but was amenable to the rule having an opt-in provision.  
Parents of children with disabilities urge adoption of this rule.  
The Special Education Advocacy Center urges adoption of this rule.  
The Tennessee State Board of Education urges adoption of this rule.

- (D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule or the necessity to promulgate the rule;

N/A

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

N/A

- (F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Elizabeth Taylor  
Elizabeth.Taylor@tn.gov

(G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Elizabeth Taylor  
[Elizabeth.Taylor@tn.gov](mailto:Elizabeth.Taylor@tn.gov)

Nathan James  
[Nathan.James@tn.gov](mailto:Nathan.James@tn.gov)

(H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Elizabeth Taylor  
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615-532-3528  
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(I) Any additional information relevant to the rule proposed for continuation that the committee requests.

**Department of State  
Division of Publications**

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Nashville, TN 37243  
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**For Department of State Use Only**

Sequence Number: 08-14-18  
Rule ID(s): 7225  
File Date: 8/13/18  
Effective Date: 11/11/18

## Rulemaking Hearing Rule(s) Filing Form

*Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing (Tenn. Code Ann. § 4-5-205).*

*Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).*

<b>Agency/Board/Commission:</b>	State Board of Education
<b>Division:</b>	
<b>Contact Person:</b>	Elizabeth Taylor
<b>Address:</b>	Andrew Johnson Tower, 1 <sup>st</sup> Floor 710 James Robertson Pkwy Nashville, TN
<b>Zip:</b>	37243
<b>Phone:</b>	615-253-5707
<b>Email:</b>	<a href="mailto:Elizabeth.Taylor@tn.gov">Elizabeth.Taylor@tn.gov</a>

**Revision Type (check all that apply):**

- Amendment  
 New  
 Repeal

**Rule(s)** (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that ALL new rule and repealed rule numbers are listed in the chart below. Please enter only ONE Rule Number/Rule Title per row)

Chapter Number	Chapter Title
0520-01-09	Special Education Programs and Services
Rule Number	Rule Title
0520-01-09-.15	Parent Participation

**RULES OF  
STATE BOARD OF EDUCATION**

**CHAPTER 0520-01-09  
SPECIAL EDUCATION PROGRAMS AND  
SERVICES**

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0520-01-09-.03	Consent.	0520-01-09-.15	Parent participation.
0520-01-09-.04	Parent.	0520-01-09-.16	Prior notice by local education agency.
0520-01-09-.05	Free appropriate public education.	0520-01-09-.17	Mediation.
0520-01-09-.06	Child find.	0520-01-09-.18	Impartial due process hearing.
0520-01-09-.07	Placements.	0520-01-09-.19	Civil action.
0520-01-09-.08	State advisory panel.	0520-01-09-.20	Surrogate parents.
0520-01-09-.09	Local education agency eligibility.	0520-01-09-.21	Transfer of parental rights at age of majority
0520-01-09-.10	Repealed.	0520-01-09-.22	Amendment of records at parent's request
0520-01-09-.11	Evaluation procedures.	0520-01-09-.23	Isolation and Restraint for Students
0520-01-09-.12	Definition of IEP.		Receiving Special Education Services

**0520-01-09-.15 PARENT PARTICIPATION.**

The LEA must notify the parents of a child with a disability at least ten (10) school days before an IEP meeting to ensure that a parent will have an opportunity to attend. A meeting conducted pursuant to 34 C.F.R. §\_300.530(e) may be conducted on at least twenty-four (24) hours' notice to the parent(s). The parent meeting notification shall advise the parent(s) that they may decline their right to receive a copy of the draft IEP if one is developed. Unless a parent provides written notice to the LEA more than forty-eight (48) hours prior to the scheduled meeting declining his or her right to receive a copy of the draft IEP, a copy of the draft IEP shall be provided to the parent(s) at least forty-eight (48) hours prior to the scheduled meeting time. The copy of the draft IEP shall become the property of the parent(s). If the LEA prepares a draft IEP prior to the IEP team meeting, the LEA shall make it clear to the parent(s) at the outset of the meeting that the services proposed by the LEA are preliminary recommendations for review and discussion with the parent(s). It is not permissible for the LEA to have the final IEP completed before an IEP Team meeting begins.

**Authority:** T.C.A. §§ 49-10-101 and 49-10-701. **Administrative History:** Original rule filed June 19, 2001; effective September 2, 2001. Amendments filed March 1, 2005; effective July 29, 2005. Repeal and new rule filed November 30, 2007; effective February 13, 2008.

\* If a roll-call vote was necessary, the vote by the Agency on these rulemaking hearing rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Haden Bawcum	X				
Darrell Cobbins	X				
Bob Eby		X			
Mike Edwards	X				
Gordon Ferguson				X	
Lillian Hartgrove		X			
Elissa Kim	X				
Fielding Rolston		X			
Wendy Tucker	X				
Lang Wiseman	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the State Board of Education on April 20, 2018, and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 01/26/2018

Rulemaking Hearing(s) Conducted on: (add more dates). 03/22/2018

Date: 7/20/2018

Signature: 

Name of Officer: Elizabeth Taylor

Title of Officer: General Counsel



Subscribed and sworn to before me on: 7-20-18

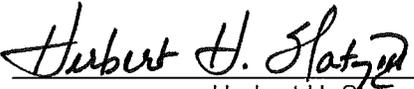
Notary Public Signature: 

My commission expires on: 3-8-21

Agency/Board/Commission: State Board of Education

Rule Chapter Number(s): 0520-01-09-.15 - Parent Participation

All emergency rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

  
Herbert H. Slatery III  
Attorney General and Reporter  
8/3/2018 Date

**Department of State Use Only**

Filed with the Department of State on: 8/13/18

Effective on: 11/11/18

  
Tre Hargett  
Secretary of State

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## G.O.C. STAFF RULE ABSTRACT

<u>DEPARTMENT:</u>	State Board of Education
<u>DIVISION:</u>	
<u>SUBJECT:</u>	Career Ladder
<u>STATUTORY AUTHORITY:</u>	Tennessee Code Annotated, Section 49-1-302(n)
<u>EFFECTIVE DATES:</u>	November 27, 2018 through June 30, 2019
<u>FISCAL IMPACT:</u>	N/A
<u>STAFF RULE ABSTRACT:</u>	<p>The career ladder program was discontinued in 1997; however, supplements continue to be paid to any teacher with an active license who earned a career ladder endorsement prior to discontinuation of the program.</p> <p>This item repeals several sections of the rule that no longer apply due to the discontinuation of the career ladder program. With the proposed changes, the rule will still address:</p> <ul style="list-style-type: none"><li>• Career ladder program eligibility;</li><li>• Educator breaks in service; and</li><li>• Career ladder payment endorsement levels.</li></ul>

## **Regulatory Flexibility Addendum**

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rulemaking process, all agencies shall conduct a review of whether a proposed rule or rule affects small business.

This rule does not affect small businesses.

### **Impact on Local Governments**

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 “any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments.” (See Public Chapter Number 1070 (<http://publications.tnsosfiles.com/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

This rule will not impact local governments.

## Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

The career ladder program was discontinued in 1997; however, supplements continue to be paid to any teacher with an active license who earned a career ladder endorsement prior to discontinuation of the program.

This item repeals several sections of the rule that no longer apply due to the discontinuation of the career ladder program. With the proposed changes, the rule will still address:

- Career ladder program eligibility;
- Educator breaks in service; and
- Career ladder payment endorsement levels

- (B) A citation to and a brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

Pursuant to T.C.A. § 49-1-302(n), the State Board of Education shall develop guidelines, criteria and administrative rules as necessary to assure the payment of career ladder supplements to eligible recipients so long as they remain in positions in the public schools that qualify for such supplements.

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge the adoption or rejection of this rule;

Educators and local boards of education are most directly affected by this rule and have neither urged or rejected adoption of this rule. The State Board of Education and the Tennessee Department of Education urge adoption of this rule,

- (D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule or the necessity to promulgate the rule;

N/A

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

N/A

- (F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Elizabeth Taylor  
[Elizabeth.Taylor@tn.gov](mailto:Elizabeth.Taylor@tn.gov)

Nathan James  
[Nathan.James@tn.gov](mailto:Nathan.James@tn.gov)

Elizabeth Fiveash  
[Elizabeth.Fiveash@tn.gov](mailto:Elizabeth.Fiveash@tn.gov)

(G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Elizabeth Taylor  
[Elizabeth.Taylor@tn.gov](mailto:Elizabeth.Taylor@tn.gov)

Nathan James  
[Nathan.James@tn.gov](mailto:Nathan.James@tn.gov)

Elizabeth Fiveash  
[Elizabeth.Fiveash@tn.gov](mailto:Elizabeth.Fiveash@tn.gov)

(H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Elizabeth Taylor  
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(I) Any additional information relevant to the rule proposed for continuation that the committee requests.

N/A

**Department of State  
Division of Publications**

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**For Department of State Use Only**

Sequence Number: 08-32-18  
Rule ID(s): 7236  
File Date: 8/29/18  
Effective Date: 11/27/18

## Proposed Rule(s) Filing Form

*Proposed rules are submitted pursuant to Tenn. Code Ann. §§ 4-5-202, 4-5-207, and 4-5-229 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within ninety (90) days of the filing of the proposed rule with the Secretary of State. To be effective, the petition must be filed with the Agency and be signed by ten (10) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of ten (10) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.*

*Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).*

<b>Agency/Board/Commission:</b>	State Board of Education
<b>Division:</b>	
<b>Contact Person:</b>	Elizabeth Taylor
<b>Address:</b>	Andrew Johnson Tower, 1st Floor
<b>Zip:</b>	710 James Robertson Pkwy
<b>Phone:</b>	37243
<b>Email:</b>	615-253-5707

**Revision Type (check all that apply):**

- Amendment  
 New  
 Repeal

**Rule(s)** (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that **ALL** new rule and repealed rule numbers are listed in the chart below. Please enter only **ONE** Rule Number/Rule Title per row)

Chapter Number	Chapter Title
0520-02-02	Career Ladder
Rule Number	Rule Title
0520-02-02-.01	Definitions Related to Comprehensive Education Reform Act
0520-02-02-.02	Career Ladder Occupational Educator Certificates
0520-02-02-.03	Breaks in Service
0520-02-02-.04	Withdrawing from and Reentering the Career Ladder Program
0520-02-02-.05	Change in Career Ladder Level
0520-02-02-.06	Career Ladder Payments
0520-02-02-.07	Disposition of Career Ladder Evaluation Records
0520-02-02-.08	Special Groups Certificates

0520-02-02-.09	Career Ladder Trade Shop Certificates
0520-02-02-.20	Job Descriptions, Supervisors
0520-02-02-.21	Job Descriptions, Speech/Language Specialists
0520-02-02-.22	Job Descriptions, School Psychologist
0520-02-02-.23	Job Descriptions, School Social Workers
0520-02-02-.24	Job Descriptions, Attendance Supervisors
0520-02-02-.25	Job Descriptions, Audiologists
0520-02-02-.26	Job Descriptions, School Counselors
0520-02-02-.27	Job Descriptions, Consulting Teachers
0520-02-02-.29	State Board of Education Career Ladder Certification Appeals Process

**RULES  
OF  
THE STATE BOARD OF EDUCATION**

**CHAPTER 0520-02-02  
CAREER LADDER**

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0520-02-02-.02	<u>Career Ladder Eligibility Education Reform Act</u>	<u>0520-02-02- .21</u>	<u>Repealed Job Description, Speech/ Language</u>
<u>0520-02-02- .03</u>	<u>Breaks in Service Career Ladder Occupational Educator</u>	<u>0520-02-02-.22</u>	<u>Repealed Specialists</u>
0520-02-02-.04	<u>Repealed Certificates</u>	<u>0520-02-02- .23</u>	<u>Repealed Job Description, School Psychologist</u>
<u>0520-02-02- .05</u>	<u>Repealed Breaks in Service</u>	<u>0520-02-02- .24</u>	<u>Repealed Job Description, School Social Workers</u>
<u>0520-02-02- .06</u>	<u>Career Ladder Payments Withdrawing from and Reentering the Career</u>	<u>0520-02-02- .25</u>	<u>Repealed Job Description, Attendance Supervisors</u>
0520-02-02-.07	<u>Repealed Ladder Program</u>	<u>0520-02-02- .26</u>	<u>Repealed Job Description, Audiologists</u>
<u>0520-02-02- .08</u>	<u>Repealed Change in Career Ladder Level</u>	<u>0520-02-02- .27</u>	<u>Repealed Job Description, School Counselors</u>
<u>0520-02-02- .09</u>	<u>Repealed Career Ladder Payments</u>	<u>0520-02-02- .28</u>	<u>Reserved Job Description, Consulting Teachers</u>
0520-02-02-.10	<u>Disposition of Career Ladder Evaluation</u>	<u>0520-02-02- .29</u>	<u>Repealed Reserved</u>
<u>0520-02-02- .11</u>	<u>Records</u>	<u>0520-02-02- .30</u>	<u>State Board of Education Career Ladder</u>
<u>0520-02-02- .12</u>	<u>Reserved Special Groups Certificates</u>	<u>through</u>	<u>Certification Appeals Process</u>
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0520-02-02-.15		<u>0520-02-02-.34</u>	<u>Repealed</u>
0520-02-02-.16	<u>Reserved</u>		

**0520-02-02-.01 SCOPE DEFINITIONS RELATED TO COMPREHENSIVE EDUCATION REFORM ACT.**

The career ladder program was discontinued in 1997; however, supplements continue to be paid to teachers any teacher with an active license who earned a career ladder endorsement prior to discontinuation of the program.

(1) For career ladder purposes, a school year shall be defined as a minimum of five months or 100 days of active employment during any one school year.

(2) A negative evaluation is one which indicates less than satisfactory performance and in which the overall summary statement is negative. If the evaluation consists of multiple parts and there is

~~no unifying summary, then a majority of the parts related to the educator's professional competence must be negative.~~

**Authority:** ~~T.C.A. § 49-5-5001 et seq~~1-302. **Administrative History:** (For history prior to November 14, 1986, see pages i through vii.) Amendment filed September 30, 1986; effective November 14, 1986. Repealed and new rule filed March 16, 1992; effective June 29, 1992. Amendment filed January 31, 1995; effective May 31, 1995. Amendment filed May 28, 1999; effective September 28, 1999.

**0520-02-02-.02 CAREER LADDER ELIGIBILITY.**

(1) The following teachers with a career ladder endorsement shall be eligible to receive career ladder payments until retirement:

- (a) General education;
- (b) Career and technical education;
- (c) Occupational;
- (d) Special education;
- (e) School nutrition program supervisors;
- (f) Speech and language specialists;
- (g) Librarians;
- (h) School counselors;
- (i) Consulting teachers;
- (j) School psychologists and social workers;
- (k) Attendance supervisors;
- (l) Principals;
- (m) Assistant principals; and
- (n) Supervisors.

(2) Additionally, educators in the following positions that who meet the specified requirements shall be eligible to receive career ladder payments until retirement:

(a) Permanent Substitute Teachers or Ppart-time Tteachers.

- 1. A permanent substitute or part-time teacher shall be defined as a teacher who is employed to teach at least 540 hours (actual instructional time) during any given school year.
- 2. A permanent substitute or part-time teacher shall receive that portion of the incentive salary supplement for his or her career level proportionate to the percentage of total instructional time (1080 hours) worked during the school year.

(b) Educators in Dual Positions.

1. ~~Educators employed full-time in dual or multiple assignments shall be eligible to receive full salary supplements.~~

2. ~~Educators employed full-time in dual or multiple assignments may participate in the career ladder program provided that at least fifty percent (50%) of their time is spent in assignments that are covered by the career ladder system.~~

~~(c) Teaching Principals.~~

1. ~~The Department of Education shall grant fifty percent (50%) credit for experience, verified by the local board of education shall grant fifty percent (50%) credit for experience to have been earned by a teaching principals with a valid principal endorsement and who spend has spent less than fifty percent (50%) of the the time dedicated toin administrative duties.~~

2. ~~The Department of Education shall grant fifty percent (50%) credit for experience, verified by the local board of education. The local board of education shall grant fifty percent (50%) credit for experience to have been earned by a teaching assistant principals with a valid principal endorsement and who spendhas spent less than fifty percent (50%) of the time dedicated toin administrative duties.~~

~~(1) Record and types of previous Tennessee employment. In order to be considered as having entered the teaching profession prior to the effective date of the Comprehensive Education Reform Act of 1984, an educator shall have on file with the State Department of Education a record of previous Tennessee employment experience accrued prior to July 1, 1984.~~

~~(2) Years of Experience. Years of experience acceptable for use in determining career ladder eligibility and advancement shall be the same as those used for salary purposes by the State Department of Education.~~

~~(3) Part-Time and Substitute Teachers.~~

~~(a) A permanent substitute or part-time teacher shall be defined as a teacher who is employed to teach at least 540 hours (actual instructional time) during any given school year.~~

~~(b) A permanent substitute or part-time teacher shall receive that portion of the incentive salary supplement for his/her career level proportionate to the percentage of total instructional time (1080 hours) worked during the school year.~~

~~(c) Permanent substitute or part-time teachers may be evaluated for career level I, II or III status, if they meet all criteria designated by T.C.A. §49-5-5001 et seq. for entry into that career level and if their assignments allow for the conduct of the evaluation process established for all teachers by the State Board of Education. If the term of service of the permanent substitute or part-time teacher does not compromise the integrity of the evaluation process, such evaluation shall be conducted within one school year.~~

~~(4) Educators in Dual Positions.~~

~~(a) Educators employed full-time in dual or multiple assignments either within the same career ladder system or in different career ladder systems shall be eligible to receive full salary supplements. For purposes of career ladder eligibility and advancement, these educators shall be evaluated in the assignment in which they spend the majority of their employment time. If their time is evenly divided, however, the educator may choose the~~

~~assignment category for evaluation. The educator shall also meet all requirements (e.g., job description) for evaluation which are applicable to the position.~~

~~(b) Educators employed full-time in dual or multiple assignments may participate in the career ladder program provided that at least 50 percent of their time is spent in assignments that are covered by the career ladder system and provided that applicable evaluation procedures exist. Educators meeting this requirement shall be treated as educators who are employed on a part-time basis as stated in T.C.A. §49-5-5005. They also shall be subject to all other rules which govern career ladder eligibility.~~

~~(5) Teaching Principals.~~

~~(a) The Department of Education shall grant 50% credit for experience verified by the local board of education to have been earned by a teaching principal with a valid principal endorsement who has spent less than 50% of the time in administrative duties.~~

~~(b) The Department of Education shall grant 50% credit for experience verified by the local board of education to have been earned by a teaching assistant principal with a valid principal endorsement who has spent less than 50% of the time in administrative duties.~~

~~(c) An election under these provisions shall prohibit such experience from being counted toward any other career ladder option for which the person may be eligible.~~

**Authority:** ~~T.C.A. §§ 49-5-5001 et seq., 49-5-5005; 49-5-5201 et seq., 49-5-5301; 49-5-5401 and 49-5-55011-302.~~ **Administrative History:** ~~(For history prior to November 14, 1986 see pages i through vii.) Amendment filed September 30, 1986; effective November 14, 1986. Amendment filed January 31, 1995; effective May 31, 1995. Amendment filed May 28, 1999; effective September 28, 1999.~~

**0520-02-02-.03 BREAKS IN SERVICE.**

~~(1) (1) Breaks In Service.~~

~~(a) A break in service shall be defined as any interruption in teaching service on the part of a teacher, assistant principal, principal, instructional supervisor, or other educator with a career ladder endorsement certificated within the career ladder program.~~

~~(ab) If an educator's employment includes a break in service, that educator's career ladder endorsement certificate of record shall be "frozen" at the commencement of the break in service. No years of validity shall be lost from the certificate endorsement during the break of service except as noted below.~~

~~(bc) State Board of Education regulations governing years of experience for salary purposes shall be used in determining whether or not the year in which the break in service occurs is counted toward certificate career ladder endorsement expiration. If the break in service is less than 100 days (in any one school year), that year shall count toward the educator's years of experience certificate endorsement expiration. If the break in service is 100 days or more (in any one school year), that year shall not count toward the educator's years of experience certificate endorsement expiration.~~

~~(cd) Upon re-employment of a certificated career ladder endorsed educator after a break in service, the educator through shall notify the superintendent of the employing local school system shall make application to the Office of Teacher Licensing for re-issuing the certificate of record Ddirector of Sschools of his or hertheir career ladder eligibility. The request shall include notification of re-employment and the length (in days) of the break in~~

service. The Office of Teacher Licensing shall issue a new certificate to the educator with a corrected expiration date.

- (2) ~~Supplements may be carried over when an educator moves to a position covered by another evaluation system. The educator may continue to use the previous valid certificate until the expiration date of that certificate. Evaluations conducted after the change in position shall assess the educator's exercise of competencies defined for performance in the new position.~~
- (23) A career ladder educator who moves temporarily into a professional position not included in the career ladder program, and which is not considered an interruption in teaching service, may continue to use the previous valid ~~certificate~~ career ladder endorsement and receive the supplement associated with it for one (1) year. Thereafter, the career ladder educator shall be subject to the provisions of that position unless the educator returns to the previously held position, and the educator's previously held ~~career ladder certificate endorsement~~ shall be frozen in accordance with the provisions stipulated in ~~section paragraph~~ (1) of this rule. It shall be the responsibility of the local school system to notify the Office of Teacher Licensing when an educator is placed temporarily in a position not included in the career ladder program.

**Authority:** T.C.A. §§ 49-5-5003; 49-5-5004 and 49-5-51041-302. **Administrative History:** (For history prior to November 14, 1986 see pages i through vii.) Amendment filed September 30, 1986; effective November 14, 1986. Repealed and new rule filed March 16, 1992; effective June 29, 1992. Amendment filed May 28, 1999; effective September 28, 1999.

#### 0520-02-02-.04 REPEALED. WITHDRAWING FROM AND REENTERING THE CAREER LADDER PROGRAM.

##### Repealed

- (1) ~~An educator may withdraw from career ladder participation at any time. Any educator who chooses to withdraw from the career ladder program shall declare the intention in writing to the Office of Teacher Licensing, State Department of Education, and to the superintendent of the employing local school system no fewer than thirty days prior to the date of withdrawal.~~
- (2) ~~The career ladder certificate of the educator shall expire on its stated expiration date.~~
- (3) ~~Any educator who withdraws from the career ladder program shall not be entitled to a career ladder supplement and shall not be required to perform the career ladder duties.~~
- (4) ~~Any educator whose career ladder certificate has not expired may re-enter the career ladder program only at the beginning of any academic school year. Intent to re-enter the career ladder program shall be submitted in writing to the Office of Teacher Licensing, State Department of Education, and to the superintendent of the employing local school system.~~
- (5) ~~If an educator whose career ladder certificate has expired subsequently elects to re-enter the career ladder program, the applicant shall be eligible to apply for career ladder certification evaluation based on experience as set out in T.C.A. 49-5-5005.~~

**Authority:** T.C.A. §§ 49-5-108; 49-5-5003; 49-5-5004 and 49-5-50051-302. **Administrative History:** (For history prior to November 14, 1986 see pages i through vii.) Repealed and new rule filed March 16, 1992; effective June 29, 1992. Amendment filed May 28, 1999; effective September 28, 1999.

#### 0520-02-02-.05 REPEALED. CHANGE IN CAREER LADDER LEVEL.

##### Repealed

An educator may move to a higher career ladder certificate under certain conditions.

~~(1) If an educator meets the qualification standards for a higher career ladder certification level, and if that person has the requisite years of experience, such person may automatically receive that higher career ladder certification at the educator's option. If an educator does not meet the qualification standards for the career ladder certification level for which the educator applies, such person shall automatically receive the next lower career ladder certification for which the person is eligible.~~

~~(2) An educator who chooses to take a lower level certificate than the one to which one is entitled by experience and evaluation results may reverse the decision and request in writing the higher level certificate at any time during the period of validity of the lower level certificate. The higher level certificate so requested shall have the same expiration date as the lower level certificate that it supersedes.~~

~~(3) Educators who lack the year(s) of experience required for a higher level of certification at the time that evaluation for a lower level of certification begins and who meet evaluation criteria and standards for the higher level of certification shall be issued the higher level of certification at the completion of the experience requirement. The higher level certification shall become effective at the beginning of the school year following the completion of the experience requirement and shall have the same expiration date as the lower level certificate that it supersedes. The educator has the right to refuse advancement to the higher level of certification.~~

**Authority:** ~~T.C.A. §§ 49-5-5003; 49-5-5004; 49-5-5103 and 49-5-52021-302.~~ **Administrative History:** ~~(For history prior to November 14, 1986 see pages i through vii.) Amendment filed September 30, 1986; effective November 14, 1986. Repealed and new rule filed March 16, 1992; effective June 29, 1992. Amendment filed May 28, 1999; effective September 28, 1999.~~

#### **0520-02-02-.06 CAREER LADDER PAYMENTS.**

~~(1) Career ladder supplements shall be paid according to the educator's career ladder endorsement:~~

~~(a) Career ILadder I~~

~~(b) Career ladder II~~

~~(c) Career ladder III~~

~~(2) Educators shall be employed for a minimum of 100 days to be eligible for career ladder payments.~~

~~(3) Eligible eEducators who are employed between 100 and 199 days shall receive a pro-rated career ladder payment based on the number of days employed.~~

~~(4) Educators who are employed 200 days or more shall receive the full career ladder payment based on their level of endorsement.~~

~~(5) Career ladder payments shall be paid by the local school district system on the regular pay period or semi-annual basis. The local school system shall decide which method of payment shall be used for a school year and shall report this action to the Commissioner of Education.~~

**Authority:** ~~T.C.A. §§ 49-1-302; 49-5-5003; 49-5-5004 and 49-5-5103.~~ **Administrative History:** ~~(For history prior to November 14, 1986 see pages i through vii.) Amendment filed September 30, 1986; effective November 14, 1986. Amendment filed May 21, 1987; effective August 29, 1987. Repealed and new rule filed March 16, 1992; effective June 29, 1992. Amendment filed May 28, 1999; effective September 28, 1999.~~

#### **0520-02-02-.07 REPEALED. DISPOSITION OF CAREER LADDER EVALUATION RECORDS.**

Repealed

~~(1) All documents submitted to the Department of Education as part of the evaluation process of a career ladder educator will be photographically recorded in a procedure approved pursuant to T.C.A. 10-7-501, and the photographic record retained permanently.~~

~~(2) The originals of all documents photographically recorded as provided in paragraph (1) will be retained for one year from the date of the certification decision.~~

~~(3) The original documents of all educators who are appealing their certification decisions will be retained until the appeal is completed and for one year thereafter.~~

~~(4) After the expiration of one year, the original evaluation documents will be disposed of as follows:~~

~~(a) The documents will be sent to the educator if the educator requests them; or~~

~~(b) If the educator does not request the documents, they will be destroyed.~~

~~(5) Those records destroyed or returned to the educator will be deemed decertified as official public records. Thereafter, only the photographic record made and retained pursuant to paragraph (1) will be deemed the official public record.~~

**Authority:** T.C.A. §§ 49-5-5003; 49-5-5004 and 49-5-51041-302. **Administrative History:** (For history prior to November 14, 1986 see pages i through vii.) Amendment filed September 30, 1986; effective November 14, 1986. Repealed and new rule filed March 16, 1992; effective June 29, 1992. Amendment filed May 28, 1999; effective September 28, 1999.

#### **0520-02-02-.08 REPEALED. SPECIAL GROUPS CERTIFICATES.**

##### Repealed

~~(1) Career ladder special groups certificates shall be issued to persons employed as guidance counselors, school psychologists, and school social workers. These certificates shall be entitled: the apprentice special groups certificate, the career level I special groups certificate, the career level II special groups certificate, and the career level III special groups certificate.~~

~~(2) The length of validity of career ladder special groups certificates shall be the same as for teachers' certificates as set forth in T.C.A. §49-5-5203.~~

~~(3) Advancement requirements, eligibility requirements, supplements for outstanding performance and for extra duties for holders of career ladder special group certificates shall be comparable to those stipulated for teachers in T.C.A. §§49-5-5201 and 49-5-5208.~~

**Authority:** T.C.A. § 49-5-50041-302. **Administrative History:** (For history prior to November 14, 1986 see pages i through vii.) Amendment filed September 30, 1986; effective November 14, 1986. Repealed and new rule filed March 16, 1992; effective June 29, 1992. Amendment filed May 28, 1999; effective September 28, 1999.

#### **0520-02-02-.09 REPEALED. CAREER LADDER OCCUPATIONAL EDUCATOR CERTIFICATES.**

##### Repealed

~~(1) The occupational teacher may advance to career level I teacher provided that:~~

~~(a) The teacher has met all requirement for the issuance of the occupational license; and~~

- ~~(b) The teacher receives a positive recommendation on the local and state evaluations.~~
- ~~(2) The occupational teacher may renew the career level I certificate provided that:~~
  - ~~(a) The teacher continues to maintain the occupational license;~~
  - ~~(b) The teacher successfully completes one course from an approved industrial education program or other secondary teacher training course offering through any approved teacher training institution; and~~
  - ~~(c) The teacher receives a positive recommendation on state and local evaluations.~~
- ~~(3) The occupational teacher may advance to career level II teacher provided that:~~
  - ~~(a) The teacher has met experience requirements for career level II; and~~
  - ~~(b) The teacher receives a positive recommendation on local and state evaluations.~~
- ~~(4) The occupational teacher may renew the career level II certification provided that:~~
  - ~~(a) The teacher continues to maintain the occupational license;~~
  - ~~(b) The teacher successfully completes one course from an approved industrial education program or other secondary teacher training course offering through any approved teacher training institution; and~~
  - ~~(c) The teacher receives a positive recommendation on state and local evaluations.~~
- ~~(5) The occupational teacher may advance to career level III teacher provided that:~~
  - ~~(a) The teacher has met experience requirements for career level III; and~~
  - ~~(b) The teacher receives a positive recommendation on local and state evaluations.~~
- ~~(6) The occupational teacher may renew the career level III certification provided that:~~
  - ~~(a) The teacher continues to maintain the occupational license;~~
  - ~~(b) The teacher successfully completes one course from an approved industrial education program or other secondary teacher training course offering through any approved teacher training institution; and~~
  - ~~(c) The teacher receives a positive recommendation on state and local evaluations.~~

**Authority:** ~~T.C.A. §§ 49-5-108; 49-5-5003 and 49-5-50041-302.~~ **Administrative History:** (For history prior to November 14, 1986 see pages i through vii.) Amendment filed September 30, 1986; effective November 14, 1986. Repealed and new rule filed March 16, 1992; effective June 29, 1992. Amendment filed May 28, 1999; effective September 28, 1999. Repeal and new rule filed September 6, 2013; effective February 28, 2014.

~~0520-02-02-.10 THROUGH 0520-02-02-.19 — RESERVED.~~

~~0520-02-02-.20 REPEALED. JOB DESCRIPTION, SUPERVISORS.~~

Repealed

~~(1) — Direct Service to Teachers.~~

(a) ~~Observation and Supervision. The supervisor:~~

- ~~1. Observes the teacher in the classroom~~
- ~~2. Records the instructional process~~
- ~~3. Analyzes the record for strengths and weakness~~
- ~~4. Prioritizes strengths and weaknesses~~
- ~~5. Conferences teachers~~
- ~~6. Plans for instructional improvement~~
- ~~7. Demonstrates effective instructional practices when needed.~~

(b) ~~Organization for Staff Development. The supervisor:~~

- ~~1. Assesses individual needs of teachers~~
- ~~2. Plans staff development activities appropriate for the assessed needs~~
- ~~3. Conducts staff development training~~
- ~~4. Evaluates staff development activities~~
- ~~5. Plans future staff development activities based on evaluation.~~

(c) ~~Implementation of Staff Meetings. The supervisor:~~

- ~~1. Plans staff meetings for curriculum decisions~~
- ~~2. Implements curriculum decisions based on staff recommendations.~~

(d) ~~Evaluation. The supervisor:~~

- ~~1. Evaluates instruction (teaching act)~~
- ~~2. Evaluates instructional program~~
- ~~3. Plans for improvement based upon evaluation.~~

(2) ~~Indirect Service to Teachers.~~

(a) ~~Development of educational goals and objectives. The supervisor:~~

- ~~1. Reviews research relative to effective instruction and curriculum~~
- ~~2. Assesses community expectations for school achievement~~
- ~~3. Prioritizes community needs and identifies education goals~~
- ~~4. Analyzes state rules and regulations~~
- ~~5. Synthesizes local and state expectations~~

~~6. Identifies goals for improvement.~~

~~(b) Development of Curriculum. The supervisor:~~

~~1. Develops, selects, and adjusts curriculum materials~~

~~2. Correlates and disseminates curriculum information and materials.~~

~~(c) Communication with Parents and Community Groups. The supervisor:~~

~~1. Solicits parental and community support of local educational goals~~

~~2. Provides appropriate information to community.~~

~~(d) Evaluation of Student Achievement. The supervisor:~~

~~1. Assists teachers in developing and/or conducting a system-wide testing program~~

~~2. Assists teachers with the selection of appropriate management systems~~

~~3. Interprets test data~~

~~4. Prepares reports~~

~~5. Disseminates information appropriately to faculty, parents, and community.~~

~~(e) Administration (not more than 30% of total time). The supervisor:~~

~~1. Consults with other administrators regarding personnel matters~~

~~2. Assists with budget preparation for curriculum and instruction~~

~~3. Prepares projects and proposals.~~

~~(3) Instructional supervisors who spend at least seventy percent of their time on direct and indirect service to teachers in staff and curriculum development shall be eligible for career ladder evaluation.~~

**Authority:** T.C.A. §§ 49-5-5003; 49-5-5004 and 49-5-55011-302. **Administrative History:** (For history prior to November 14, 1986, see pages i through vii.) Amendment filed September 30, 1986; effective November 14, 1986. Amendment filed November 18, 1987; effective February 28, 1988. Repealed and new rule filed March 16, 1992; effective June 29, 1992.

**0520-02-02-.21 REPEALED. JOB DESCRIPTION, SPEECH/LANGUAGE SPECIALISTS.**

Repealed

~~(1) Service to Students:~~

~~(a) Evaluation and Assessment. The speech/language specialist:~~

~~1. Assesses individual speech/language needs of students and makes recommendations~~

~~2. Certifies students in accordance with state and federal guidelines~~

~~3. Refers students to other professionals of outside (school) agencies when needed~~

~~4. Evaluates student progress in relation to treatment and reports progress to students.~~

~~(b) Planning and Program Management. The speech/language specialist:~~

~~1. Prepares individual educational programs, additional plans and materials to address student needs~~

~~2. Plans and implements a program of speech and language services~~

~~3. Selects and schedules case loads~~

~~4. Maintains up-to-date, appropriate student and program records.~~

~~(c) Delivery of Services. The speech/language specialist:~~

~~1. Delivers effective speech therapy.~~

~~(2) Services to School Staff:~~

~~(a) Planning. The speech/language specialist:~~

~~1. Consults and works with school staff to provide a total program for the student~~

~~2. Assists staff in identifying and solving teaching/learning and school problems~~

~~3. Assists in establishing school/system goals.~~

~~(b) Consultation and Communication. The speech/language specialist:~~

~~1. Serves as an effective M-team member.~~

~~2. Reports student performance and progress regularly to school staff.~~

~~3. Communicates state and federal requirements to school staff.~~

~~4. Promotes parent/community interest in the school.~~

~~(3) Service to Parents:~~

~~(a) Consultation and Communication. The speech/language specialist:~~

~~1. Consults with parents to integrate home and school goals~~

~~2. Reports student performance and progress regularly to parents~~

~~3. Assists parents in locating appropriate professional services outside the school when needed.~~

~~(4) Administration (not more than 10% of total time):~~

~~(a) The speech/language specialist:~~

1. Consults with school and system administrators regarding program integration, speech, language, and hearing services and other matters
2. Assists in budget preparation for speech/language services
3. Assists in preparation of required school and/or system reports.

**Authority:** T.C.A. § 49-1-302~~T.C.A. § 49-5-5004~~. **Administrative History:** Original rule filed October 15, 1986; effective January 27, 1987. Repealed and new rule filed March 16, 1992; effective June 29, 1992.

**0520-02-02-.22 REPEALED. JOB DESCRIPTION, SCHOOL PSYCHOLOGIST.**

Repealed

(1) ~~Service to Students:~~

(a) ~~Evaluation and Assessment. The school psychologist:~~

1. Organizes, develops, and implements procedures for comprehensive, system-wide screening of students
2. Selects and administers tests which assess intelligence, academic achievement, perception, motor functioning, and/or social and emotional status of students referred
3. Gathers information from a variety of sources (e.g., interviews, observations, tests, case histories) for assessment of referred students
4. Analyzes psychological/educational data gathered and prepares assessment reports for professional staff and other who need them.

(b) ~~Counseling and Consultation. The school psychologist:~~

1. Provides individual and group counseling.

(2) ~~Services to School Staff:~~

(a) ~~Planning and Program Management. The school psychologist:~~

1. Plans, coordinates and supervises an effective school psychological services program
2. Maintains up-to-date, accurate counselee records
3. Serves as a liaison to a broad range of community agencies and practitioners and works with them in providing comprehensive services to students
4. Regularly evaluates the effectiveness of psychological services and programs and identifies needs for additional services and programs.

(b) ~~Consultation and Communication. The school psychologist:~~

1. Provides information to school staff and parents about educational/psychological strengths and needs of students.

2. Provides support and counseling to school staff.
3. Assists M-team in program planning for students with special needs.
4. Reports student status and progress regularly to school personnel.

(c) Staff Development. The school psychologist:

1. Assists the school system in assessing staff development needs
2. Provides staff development activities for school personnel on topics such as evaluation/testing, human development and child management.

(3) Service to Parents:

(a) Consultation and Communication. The school psychologist:

1. Provides information to parents about educational psychological strengths and needs of students
2. Provides support and counseling to parents
3. Assists parents in locating appropriate professional services outside the school when needed
4. Reports student progress and status regularly to parents
5. Provides parental training in areas such as child management and human development.

(4) Administration (not more than 10% of total time):

(a) The school psychologist:

1. Consults with school and system administrators regarding psychological services and other matters
2. Assists in budget preparation for psychological services as needed
3. Assists in preparation for psychological service as needed
4. Supervises other educational personnel and psychological interns when applicable.

**Authority:** T.C.A. § 49-1-302 T.C.A. §§ 49-5-5003 and 49-5-5004. **Administrative History:** Original rule filed March 16, 1992; effective June 29, 1992.

**0520-02-02-.23 REPEALED. JOB DESCRIPTION, SCHOOL SOCIAL WORKERS.**

Repealed

(1) Service to Students:

(a) Evaluation and Assessment. The school social worker:

1. Obtains information and writes social history reports including educational, personal, medical, developmental and family data

~~2. Conducts social work assessments and assists in placement of special education students.~~

~~(b) Counseling and Consultation. The school social worker:~~

~~1. Provides for individual and group counseling to reduce problem behaviors~~

~~2. Assists in integrating new and returning students into the school system.~~

~~(2) Service to School Staff.~~

~~(a) Planning and Program Management. The school social worker:~~

~~1. Plans, coordinates and supervises an effective school social work program~~

~~2. Maintains up-to-date, accurate student records~~

~~3. Serves as a liaison to community agencies and practitioners and works with them in providing comprehensive services to students~~

~~4. Regularly evaluates the effectiveness of social work services and identifies need for additional services~~

~~5. Documents treatment plans and delivery of services.~~

~~(b) Consultation and Communication. The school social worker:~~

~~1. Interprets criteria for community resource utilization to school personnel~~

~~2. Provides support and counseling to school staff~~

~~3. Assists M-team in program planning for students with special needs~~

~~4. Provides information to school staff about social needs and problems of students and families~~

~~5. Reports student and family status and progress regularly to school personnel.~~

~~(c) Staff Development. The school social worker:~~

~~1. Assists the school system in assessing staff development needs~~

~~2. Orients school personnel to school social work services~~

~~3. Provides staff development activities for school personnel on topics such as abuse, neglect, developmental delays, emotional disturbances, substance abuse and potential suicide.~~

~~(3) Service to Parents/Families.~~

~~(a) Consultation and Communication. The school social worker:~~

~~1. Make home visits and holds conferences with parents~~

~~2. Mediates between family and school clarifying expectations for students~~

~~3. Interprets criteria for community resource utilization to families and assists in locating appropriate services outside the school when needed~~

~~4. Provides support and counseling to families~~

~~5. Provides information to parents (when appropriate) about social needs and problems of students~~

~~6. Reports student progress and status regularly to parents.~~

~~(b) Parent Education. The school social worker:~~

~~1. Provides training in parenting skills.~~

~~(4) Administration (not more than 10% of total time):~~

~~(a) The school social worker:~~

~~1. Consults with school and system administrators regarding the social work program and services~~

~~2. Assists in budget preparation for social work services as needed~~

~~3. Assists in preparation of required school and/or system reports.~~

**Authority:** *T.C.A. § 49-1-302 T.C.A. §§ 49-5-5003 and 49-5-5004. Administrative History: Original rule filed March 16, 1992; effective June 29, 1992.*

**0520-02-02-.24 REPEALED. JOB DESCRIPTION, ATTENDANCE SUPERVISORS.**

Repealed

~~(1) Service to Students:~~

~~(a) Evaluation and Assessment. The school attendance supervisor:~~

~~1. Interviews and recommends placement of students returning from schools of correction, juvenile detention centers or alternative schools~~

~~2. Obtains information and prepares assessment reports on referrals~~

~~3. Assists M-teams in the assessment of program needs for special education students.~~

~~(b) Counseling and Consultation. The school attendance supervisor:~~

~~1. Counsels students regarding absenteeism~~

~~2. Conducts exit interviews and provides follow-up services to dropouts~~

~~3. Moves about the community during school hours and provides service to students on the street or in public places~~

~~4. Assists students in obtaining services through community agencies.~~

~~(2) Service to School Staff:~~

~~(a) — Planning and Program Management. The school attendance supervisor:~~

~~1. — Plans, coordinates and supervises an effective school attendance program~~

~~2. — Prepares monthly and yearly attendance reports as needed~~

~~3. — Supervises the issuance of age certificates and similar documents~~

~~4. — Conducts the annual school census~~

~~5. — Maintains records of student transfers, tuition-paying status, enforcement of boundaries and projections of future enrollments~~

~~6. — Serves as liaison to the courts, various community agencies and school personnel~~

~~7. — Regularly evaluates the effectiveness of attendance services and identifies needs for additional services~~

~~8. — Documents delivery of services.~~

~~(b) — Consultation and Communication. The school attendance supervisor:~~

~~1. — Consults with school personnel regarding individual adjustment problems as they relate to school attendance~~

~~2. — Interprets criteria for community resource utilization to school personnel~~

~~3. — Provides support and counseling to school staff~~

~~4. — Instructs teachers in procedures for attendance accounting~~

~~5. — Assists M-teams in program planning for students with special needs~~

~~6. — Reports student and family status and progress regularly to school personnel~~

~~7. — Disseminates current information to school staff regarding state laws and local board policies relating to school attendance.~~

~~(c) — Staff Development. The school attendance supervisor:~~

~~1. — Assists the school system in assessing staff development needs~~

~~2. — Orients school personnel to school attendance services.~~

~~(d) — Legal Proceedings. The school attendance supervisor:~~

~~1. — Initiates court proceedings when necessary~~

~~2. — Provides guidance to school personnel regarding due process.~~

~~(3) — Services to Parents/Families.~~

~~(a) — Consultation and Communication. The school attendance supervisor:~~

~~1. — Makes home visits and holds conferences with parents~~

2. Mediates among family, school and court when necessary
  3. Interprets criteria for community resource utilization to families and assists in locating appropriate services outside the school system when needed
  4. Consults with parents regarding school attendance and school adjustment problems
  5. Reports student status and progress regularly to parents.
- (b) Legal Proceedings. The school attendance supervisor:
1. Provides guidance to parents regarding due process.
  - (4) Administration (not more than 10% of total time):
- (a) The school attendance supervisor:
1. Consults with school and system administrators regarding attendance services and their integration with the instructional program and other pupil personnel services
  2. Assists in budget preparation for attendance services as needed
  3. Assists in preparation of required school and/or system reports other than those specifically dealing with attendance
  4. Assists legal counsel in preparation of attendance related cases.

**Authority:** *T.C.A. § 49-1-302 T.C.A. §§ 49-5-5003 and 49-5-5004. Administrative History: Original rule filed March 16, 1992; effective June 29, 1992.*

**0520-02-02-.25 REPEALED. JOB DESCRIPTION, AUDIOLOGISTS.**

Repealed

~~(1) Service to Students:~~

~~(a) Evaluation and Assessment. The audiologist:~~

- ~~1. Assesses individual auditory needs of students and makes recommendations~~
- ~~2. Refers students to other professionals or outside (school) agencies when needed~~
- ~~3. Evaluates student progress in relation to treatment and reports progress to students.~~

~~(b) Planning and Program Management. The audiologist:~~

- ~~1. Prepares plans and materials to meet the needs of hearing impaired students~~
- ~~2. Plans and implements a program of audiological services~~
- ~~3. Provides for the selection, use and maintenance of audiometric equipment, personal and classroom amplification~~

4. ~~Maintains appropriate up-to-date student and program records.~~

(c) ~~Delivery of Services. The audiologist:~~

1. ~~Delivers effective habilitative/rehabilitative auditory therapy~~

2. ~~Develops follow-up programs to monitor treatment results and recommendations.~~

(2) ~~Service to School Staff:~~

(a) ~~Planning. The audiologist:~~

1. ~~Consults and works with school staff to provide a total program for the student~~

2. ~~Assists staff in identifying and solving teaching/learning and school problems~~

3. ~~Assists in establishing school/system goals.~~

(b) ~~Consultation and Communication. The audiologist:~~

1. ~~Serves as an effective M-team member~~

2. ~~Reports student performance and progress regularly to school staff~~

3. ~~Communicates state and federal requirements to school staff~~

4. ~~Promotes parent/community interest in the school.~~

(3) ~~Services to Parents:~~

(a) ~~Consultation and Communication. The audiologist:~~

1. ~~Consults with parents in planning for hearing-impaired students~~

2. ~~Reports student assessments, performance and progress regularly to parents~~

3. ~~Assists parents in locating appropriate professional services outside the school, when needed.~~

(4) ~~Administration (not more than 10% of total time). The audiologist:~~

(a) ~~Consults with school and system administrators regarding program integration, audiological services and other matters~~

(b) ~~Assists in budget preparation for audiological services~~

(c) ~~Assists in preparation of required school and/or system reports.~~

**Authority:** ~~T.C.A. § 49-1-302 T.C.A. §§ 49-5-5003; 49-5-5004 and 49-5-5103.~~ **Administrative History:**  
~~Original rule filed March 16, 1992; effective June 29, 1992.~~

0520-02-02-.26 REPEALED. JOB DESCRIPTION, SCHOOL COUNSELORS.

Repealed

(1) ~~Service to Students:~~

(a) ~~Counseling and Consultation. The school counselor:~~

- ~~1. Provides counseling to students about adjustment to school and transition from grade level to grade level~~
- ~~2. Provides counseling to students about coping with difficult personal and family problems~~
- ~~3. Provides counseling to students in terms of increasing self-awareness and developing a positive self-concept~~
- ~~4. Provides consultation to students about decisions and goals~~
- ~~5. Provides counseling to students who are referred as having the following problems: attendance, retention, discipline, and pre-delinquency~~
- ~~6. Provides counseling in educational planning and placement~~
- ~~7. Provides counseling in career awareness and planning.~~

(b) ~~Counseling and Guidance. The school counselor:~~

- ~~1. Provides career development and educational and occupational information~~
- ~~2. Provides primary prevention instruction in areas such as sexual abuse and substance abuse at appropriate grade levels~~
- ~~3. Provides enhancement instruction in areas such as self-concept, interpersonal relations, and decision-making appropriate to student development~~
- ~~4. Uses teacher and student participation in the implementation of the guidance and counseling program.~~

(c) ~~Evaluation and Assessment. The school counselor:~~

- ~~1. Provides academic development of students through the interpretation and use of assessments~~
- ~~2. Provides self-concepts development of students through evaluation and assessment.~~

(2) ~~Service to School Staff:~~

(a) ~~Planning and Program Management. The school counselor:~~

- ~~1. Organizes, coordinates and evaluates an effective school guidance and counseling program that is based upon needs of students, staff, and parents~~
- ~~2. Plans and establishes jointly with educational staff a comprehensive guidance program that responds to development needs of students~~

3. Provides up-to-date, accurate student records as relates to the guidance program.

(b) Consultation and Communication. The school counselor:

1. Aids school staff in establishing learning environments most suited to the developmental needs of students

2. Aids school staff in the early identification of student problems

3. Aids school staff in implementing a career development program

4. Aids in program planning for students with special needs.

(c) Staff Development. The school counselor:

1. Orients the staff to the guidance and counseling services

2. Provides staff development activities for school personnel on topics such as achievement and aptitude test results, parent involvement, behavior management, student motivation and human development

3. Cooperates with educational specialists and other resources in developing strategies for serving at-risk students, such as potential dropouts.

(3) Services to Parents:

(a) Consultation and Communication. The school counselor:

1. Aids parents in developing strategies for supporting their children's educational programs

2. Provides parent training to promote better understanding of child development and behavior and to improve parent-child communication

3. Orients parents to guidance and counseling services

4. Aids parents with appropriate professional services outside the school when needed.

**Authority:** *T.C.A. § 49-1-302; T.C.A. §§ 49-5-302; 49-5-5003; 49-5-5004 and 49-6-303. Administrative History: Original rule filed March 16, 1992; effective June 29, 1992.*

**0520-02-02-.27 REPEALED. JOB DESCRIPTION, CONSULTING TEACHERS.**

Repealed

(1) Services to Students:

(a) Evaluation and Assessment. The consulting teacher:

1. Analyzes student performance data and makes recommendations

2. Involves students in specialized instructional activities as needed

3. Observes students in a classroom setting as needed.

(2) ~~Direct Service to School Staff.~~

(a) ~~Consultation and Communication. The consulting teacher:~~

- ~~1. Holds conferences with the professional staff~~
- ~~2. Observes the teachers in the classroom, as needed~~
- ~~3. Demonstrates instructional materials and assists classroom teachers in their use, as needed~~
- ~~4. Assists classroom teachers in the implementation of curricula~~
- ~~5. Provides information on current research in education~~
- ~~6. Demonstrates teaching techniques, skills, and new concepts, as needed~~
- ~~7. Assists classroom teachers in selecting instruments for assessing student needs, as needed~~
- ~~8. Assists classroom teachers in identifying student needs and makes recommendations~~
- ~~9. Consults and works with staff and appropriate others to provide a total program.~~

(b) ~~Organization for Staff Development. The consulting teacher:~~

- ~~1. Assesses needs of teachers~~
- ~~2. Assists in planning staff development activities appropriate for the assessed needs~~
- ~~3. Assists in the evaluation of staff development activities~~
- ~~4. Orients school personnel to consulting teacher services.~~

(3) ~~Indirect Service to Teachers.~~

(a) ~~Development of Goals and Objectives. The consulting teacher:~~

- ~~1. Reviews research relative to effective instruction and curriculum~~
- ~~2. Prioritizes needs and identifies goals.~~

(b) ~~Development of Curriculum. The consulting teacher:~~

- ~~1. Assists in the development, selection, and/or adjustment of curriculum materials~~
- ~~2. Assists in the correlation and dissemination of curriculum information and materials.~~

(c) ~~Communicates with Parents and Community Groups. The consulting teacher:~~

- ~~1. Solicits parental and community support of educational goals~~

2. Provides appropriate information to community.
- (d) Administration (not more than 30% of total time). The consulting teacher:
1. Recommends and/or orders materials
  2. Consults with school and system administrators regarding the consulting teacher program and services
  3. Provides a summary of consulting teacher activities to appropriate school personnel
  4. Maintains up-to-date program records.

**Authority:** *T.C.A. § 49-1-302* ~~T.C.A. § 49-5-5004~~. **Administrative History:** *Original rule filed February 27, 1990; effective May 29, 1990. Repealed and new rule filed March 16, 1992; effective June 29, 1992.*

**0520-02-02-.28 RESERVED.**

**0520-02-02-.29 REPEALED. STATE BOARD OF EDUCATION CAREER LADDER CERTIFICATION APPEALS PROCESS**

Repealed

(1) Review:

(a) Any career ladder certification applicant (hereinafter, applicant) who is not recommended for certification by either the Regional Certification Commission or the State Certification Commission shall be entitled to a review of the Regional Certification Commission or State Certification Commission decision by the State Board of Education (hereinafter, Board).

(b) Request for Review:

1. Any applicant who is entitled to such a review shall file a written request for a Board review within 60 days of the date of the decision of the Regional Certification Commission or the State Certification Commission.
2. Such written request shall be filed with the executive director of the Board.
3. This request shall specify the basis of the request for review. (See Procedures for Review, Record 0520-02-02-.29(1)(d)1.)
4. Simultaneous with the filing at the Board, the applicant shall file a copy of the request for review with the local education agency that employs him/her.

(c) Local Education Agency Intervention:

1. Upon its receipt of the copy of the request for review, the local education agency, through its designated representative, may intervene before the Board.
2. The local education agency's notice of intervention shall be filed with the Board within 30 days of receiving its copy of the applicant's request for review. The said notice shall contain a detailed statement of the basis for intervention. The agency shall also provide copy of the notice to the applicant along with the detailed statement of the basis for intervention.

~~3. Upon intervention, the local education agency shall have all the rights of other parties provided for in this rule.~~

~~(d) Procedures for Review.~~

~~1. Record.~~

~~(i) The record shall be prepared by the Regional Certification Commission or the State Certification Commission or both.~~

~~(ii) The record shall consist of all documents, statements and other materials pertinent to the basis for the decision of the Regional Certification Commission or State Certification Commission or both, including documents, statements, and other materials submitted by the local education agency to the Regional Certification Commission or State Certification Commission or both.~~

~~(iii) The record shall further include any documents, statements, or other written evidence that the local education agency desires to submit. The local education agency shall submit such statements or written evidence to the State Certification Commission for inclusion in the record.~~

~~(iv) The State Certification Commission shall notify the applicant when the record is complete. The applicant shall be entitled to review the documents, statements, and other materials submitted by the Regional Certification Commission, State Certification Commission or both. The applicant shall also be entitled to review the documents, statements, and other materials submitted by the local education agency. The record shall be available to the parties for review and, upon payment of reasonable copying costs, the record shall be mailed to the party requesting it. The applicant shall have 60 days from receipt of notification from the State Certification Commission that the record is complete, to review the record and 60 days from the date of his or her review of the record to submit additional written statements or evidence to the State Certification Commission. The staff member of the Board of Education defined in subsection 2.(i) of this rule may extend the deadline for responding in cases of hardship. The record shall include any such written statements or evidence that the applicant desires to submit. All parties shall be given notice that additions have been made to the record and have the opportunity to secure copies of such additions to the record.~~

~~(v) In the event that the information submitted to the Board is insufficient to allow review of the Regional Certification Commission or State Certification Commission decision, the Board may require the Regional Certification Commission, the State Certification Commission, the applicant or the local education agency to furnish additional information that may be necessary. The statement of the basis of the request for review may be amended anytime prior to the State Board's staff member closing the record and preparing the proposed findings of fact and recommended decision that will be mailed to the parties as set forth in subsection (c).~~

~~2. Staff Member to Conduct Review.~~

~~(i) Upon receipt of the request for a review of a decision and the record, the Board shall authorize a staff member to review the record.~~

~~(ii) The staff member who reviews the record shall prepare proposed findings of fact and a recommended decision based upon the record. The proposed findings of fact shall specify the staff member's evidentiary facts for each contested area or data source.~~

~~(iii) The reviewer shall send the recommended decision to the Board, the applicant, the State or Regional Certification Commission, and the local education agency employing the applicant within 90 days of receiving the complete record as determined in Section 4, above.~~

~~(iv) In the absence of a request for a hearing on the recommended decision, the Board shall adopt, reject, or modify the recommended decision.~~

~~(e) Standards for Review:~~

~~1. A decision may be remanded to the Regional Certification Commission or the State Certification Commission or the Local Education Agency for further consideration upon a finding that it was not made in accordance with applicable Board evaluation procedures; provided, however, that the decision should not be remanded if the procedural error was not material to the decision and, therefore, constituted harmless error.~~

~~2. A decision may be modified, reversed, or remanded upon a finding that the decision constituted an abuse of discretion on the part of an evaluator, principal, or any other individual who has conducted any part of the applicant's career ladder certification evaluation or was made in violation of Board evaluation procedures or policies; provided, however, that the decision should not be modified or reversed if the violation of policies or procedures was not material to the decision and, therefore, constituted harmless error.~~

~~3. A decision shall be affirmed in the absence of a finding of abuse of discretion or material violation of applicable Board evaluation policies or procedures.~~

~~(f) During the 1984-85 school year, such review shall be limited to career ladder certification applicants who are not recommended for career ladder certification because of:~~

~~1. (i) A failing score on a required test (either NTE or Career Ladder Test); and/or~~

~~(ii) A negative recommendation by the local education agency, board, or an history of negative performance evaluation.~~

~~2. A failure to complete adequately the staff development program.~~

~~3. A negative evaluation by the local education agency.~~

~~(2) Hearing:~~

~~(a) Any career ladder certification applicant (hereinafter, applicant) who is not recommended for certification by the staff of the State Board of Education (hereinafter, Board) after a review of the recommendation of the Regional Certification Commission or the State Certification Commission may request a hearing before a duly authorized presiding officer of the Board.~~

~~(b) Requests for hearings as provided under T.C.A. §49-5-5009(d) will be considered by a presiding officer appointed by the Board.~~

~~(c) Any applicant who is entitled to request such a hearing shall file a written request within 45 days of his or her receipt of the proposed decision of the staff of the Board.~~

~~1. The written request is filed with the executive director of the Board.~~

~~2. The executive director of the Board shall forward the request to the presiding officer appointed by the Board.~~

~~3. The request shall contain written exceptions to the decision stating the reasons for taking exception to the proposed decision and, if new evidence is sought to be introduced, a sworn, written statement describing such evidence and giving reasons why such evidence was not introduced before the Regional Commission or State Certification Commission or the Board staff.~~

~~4. Simultaneous with filing at the Board, the applicant shall file a copy of the request for hearing, with the superintendent of the local education agency that employs the applicant.~~

~~(d) Local Education Agency Intervention.~~

~~1. If the local education agency has exercised its right to intervene at the Board staff review, the agency shall be a party to the proceeding.~~

~~2. If the local agency is not a party to the proceeding prior to the time the request for a hearing is filed, a designated representative of the local education agency may request the right to intervene as a party to the proceeding.~~

~~3. The local education agency's notice of intervention shall be filed with the executive director of the Board within 30 days of receiving its copy of the applicant's request for hearing. Said notice shall contain a detailed statement of the basis for intervention, including a sworn, written statement of new evidence that the agency wishes to present to the Board. The agency shall also provide a copy of the notice to the applicant along with the detailed statement of the basis for intervention.~~

~~4. The presiding officer shall not grant intervention by a local education agency after a request for a hearing is filed unless the local education agency presents statement of material evidence which was not reasonably available for introduction in the proceedings before the Regional Certification Commission, the State Certification Commission, and the staff of the Board. If intervention is allowed on the basis of such new evidence, a hearing shall be held pursuant to section (e)2. (ii) and (f)3. of this rule.~~

~~(e) Procedures for Hearing.~~

~~1. The Record.~~

~~(i) The record shall be prepared by the staff of the Board.~~

~~(ii) The record shall consist of all documents, statements and other materials considered by the staff reviewer. The documents shall be presented chronologically and numbered consecutively.~~

~~(iii) If the local education agency is an intervening party, the record shall further include any documents, statements, or other written evidence that the local education agency has submitted.~~

~~(iv) The record shall also include the proposed decision in writing of the staff of the Board and the applicant's written exceptions to the proposed decision stating in detail the applicant's reasons for taking exception to the proposed decision.~~

~~(v) The applicant shall be entitled to review the documents, statements, and other materials submitted by the staff of the Board or the local education agency or both and may submit additional statements or written evidence in response thereto, within 30 days of receiving notice from the Board that the record has been compiled.~~

~~(vi) In the event that the information submitted to the presiding officer is insufficient to allow for a review of the proposed staff decision, the presiding officer may require the staff of the Board, the applicant, the local education agency, the Regional Certification Commission, and the State Certification Commission to furnish additional information that may be necessary. In the event the presiding officer requires additional information from a source other than the applicant, the applicant shall be entitled to review the information and submit additional evidence material to the consideration.~~

## ~~2. Presiding Officer to Conduct Hearing.~~

~~(i) Upon receipt of the applicant's request for a hearing, the presiding officer shall review the record and set the case for a hearing. The presiding officer shall set the case for hearing pursuant to the Administrative Procedures Act T.C.A. Title 4 Chapter 4 (APA) rules for hearing contested cases if: (A) the applicant presents a statement of new material evidence of alleged bias or prejudice of the Regional Certification Commission or the State Certification Commission that meets the standards set forth at T.C.A. §4-5-302(a), or a statement of other material evidence that was not presented before the Regional Certification Commission or State Certification Commission, and shows good cause for not presenting such evidence before the Regional Certification Commission or State Certification Commission or (B) if the local education agency is allowed to intervene pursuant to subsection (d) 4. of this rule. If the grounds specified in (A) or (B) are not satisfied, the presiding officer shall set the case for a conference hearing as described in Section (2)-2. (iii) of this rule.~~

~~(ii) The presiding officer will set a time for the hearing that is mutually convenient to the parties, and may reschedule the hearing for good cause.~~

~~(iii) If the presiding officer determines that the appeal shall be conducted on the basis of the existing record, the presiding officer, upon his own motion or request of a party, shall convene a conference hearing for the purpose of acquainting the presiding officer with the central issues of the appeal and allowing the applicant, the State Certification Commission, and the local education agency, to summarize their respective positions and respond to the presiding officer. The conference hearing will be conducted under the following procedures:~~

~~(I) The conference shall be informal and shall be conducted in a way that enables each participant to present its position. There shall be no examination or cross-examination of the participant except by the presiding officer;~~

~~(II) No pre-hearing conference may be held;~~

~~(III) The presiding officer is not authorized to issue subpoenas and discovery orders but may issue protective orders at the request of any party or upon the presiding officer's motion;~~

~~(IV) The presiding officer shall regulate the course of the proceedings;~~

~~(V) The parties may have counsel or other authorized representatives present at the conference for the purpose of advising them, but such representatives shall not function as advocates in the proceedings; and;~~

~~(VI) The parties may offer comments on the issues;~~

~~(VII) Prior to a hearing the presiding officer shall provide the parties with a copy of the regulations applicable to the hearing.~~

~~(iv) After considering the case, either in a conference hearing or on the basis of a hearing under the APA, the presiding officer shall set forth a recommended decision in the Initial Order pursuant to the APA and forward the record and the initial order to the Board within 60 days of the completion of the hearing. The presiding officer shall send a copy of the Initial Order to the applicant, the State or Regional Certification Commission, and the local education agency employing the applicant, within 60 days of the completion of the hearing.~~

~~(v) Review of an Initial Order shall be pursuant to the APA. Upon appeal to the Board pursuant to T.C.A. §4-5-315, the Board shall review the Initial Order and a staff summary of the case with the record made available to the members of the Board for review. Upon review, the Board may make the Initial Order its final decision, in which case the Initial Order shall become a Final Order, subject to reconsideration and judicial review under the APA.~~

~~(f) Standards for Review.~~

~~1. In reviewing a recommended decision of the staff or the Board, the presiding officer shall construe the provisions of parts 50 through 55 of T.C.A., Title 49, Chapter 5, and the rules, regulations and evaluation criteria promulgated pursuant thereto, in favor of the applicant, absent substantial and material evidence to the contrary.~~

~~2. A recommended decision may be affirmed, remanded, modified, or reversed.~~

~~(i) A recommended decision shall be affirmed if it was based upon proper procedure and there is substantial and material evidence to support it.~~

~~(ii) A recommended decision may be remanded to the Regional Certification Commission or the State Certification Commission or the local education agency or the staff of the Board for further consideration upon a finding that it was not made in accordance with applicable Board evaluation procedures or there was insufficient evidence upon which to make a decision; however, the recommended decision should not be remanded if the procedural error was not material to the decision and therefore constituted harmless error.~~

~~(iii) A recommended decision may be modified or reversed upon a finding that it is contrary to law or rule; that it constituted an abuse of discretion on the part of the Regional Certification Commission or the State Certification Commission; that there is no material and substantial evidence to support the decision of the Regional Certification Commission and State Certification Commission or the recommended decision of the staff of the Board; or that it was made in violation of Board evaluation procedures or policies; provided however, that the proposed decision should not be modified or reversed if the violation of the policies or procedures was not material to the decision and therefore constituted harmless error.~~

~~3. In all hearings conducted in accordance with subsection (e) 2. of this rule, the applicant shall have the burden of going forward with the evidence once the presiding officer has determined that the recommended decision is based on proper legal grounds and is not arbitrary or capricious. In a hearing conducted pursuant to subsection (d) 4., the burden of going forward with the evidence shall be on the local education agency.~~

**Authority:** ~~T.C.A. § 49-1-302~~ T.C.A. § 49-5-5009. **Administrative History:** (For history prior to November 14, 1986 see pages i through vii.) Amendment filed September 30, 1986; effective November 14, 1986. Repealed and new rule filed March 16, 1992; effective June 29, 1992.

If a roll-call vote was necessary, the vote by the Agency on these rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Haden Bawcum	X				
Darrell Cobbins	X				
Bob Eby	X				
Mike Edwards	X				
Gordon Ferguson				X	
Lillian Hartgrove	X				
Elissa Kim	X				
Fielding Rolston	X				
Wendy Tucker	X				
Lang Wiseman	X				

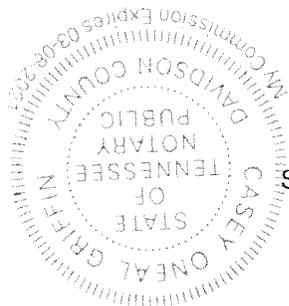
I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Tennessee State Board of Education on April 20, 2018, and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of ninety (90) days of the filing of the proposed rule with the Secretary of State.

Date: 7/30/2018

Signature: \_\_\_\_\_

Name of Officer: Elizabeth Taylor

Title of Officer: General Counsel



Subscribed and sworn to before me on: \_\_\_\_\_

Notary Public Signature: \_\_\_\_\_

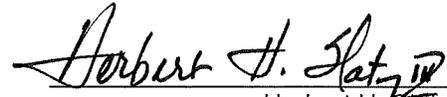
My commission expires on: \_\_\_\_\_

7/30/18  
C. Griffin  
3-8-21

Agency/Board/Commission: Tennessee State Board of Education

Rule Chapter Number(s): Chapter 0520-02-02 Career Ladder

All emergency rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

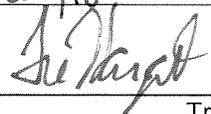
  
Herbert H. Slatery III  
Attorney General and Reporter

8/16/2018 Date

**Department of State Use Only**

Filed with the Department of State on: 8/29/18

Effective on: 11/27/18

  
Tre Hargett  
Secretary of State

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