

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

DEPARTMENT: Tennessee Technological University

SUBJECT: Access to Public Records

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 10-7-503(g)(2)

EFFECTIVE DATES: November 28, 2019 through June 30, 2020

FISCAL IMPACT: None

STAFF RULE ABSTRACT: Previously, Tennessee Tech adopted and followed the Open Records Counsel's model policy related to responding to requests for public records. This rule does not materially change Tennessee Tech's previous policy or processes for responding to such requests.

## **Comments Received and Tennessee Tech's Responses:**

**Comment:** The rule should state that a resident can affirm Tennessee Tech residency through additional specified ways, such as a checkbox, residential or business address, or student id.

**Response:** The rule provides that a requestor can meet the citizenship requirement either by a valid Tennessee driver's license or an alternative acceptable form of identification. Tennessee Tech believes the rule is flexible enough to allow requestors to provide proof of residency through any number of avenues and that specifying the mechanisms in the rule would unnecessarily limit a requestor's or Tennessee Tech's options. Tennessee Tech's "Public Records Request" webpage lists a variety of documents that are acceptable proofs of citizenship for the purpose of accessing public records, as recommended as a best practice by the Office of Open Records Counsel.

Tennessee Tech does not believe, however, that a "checkbox" is a sufficient mechanism to prove Tennessee citizenship.

**Comment:** The rule should state that if Tennessee Tech has contracted with another entity and that entity possesses record subject to the Public Records Act, Tennessee Tech will facilitate or acquire those records on behalf of the requestor.

**Response:** Tennessee Code Annotated Section 10-7-503 (a)(2)(B) requires a "custodian" of a public record to "promptly make available for inspection any public record not specifically exempt from disclosure." Tennessee Code Annotated Section 10-7-503(a)(1)(C) defines a "records custodian" as any "office, official, or employee of any governmental entity lawfully responsible for the direct custody and care of a public record." While Tennessee Tech will make contract documents in its custody available to a requestor, Tennessee Tech declines to assume the burden of acquiring records that are not its direct custody or care.

**Comment:** While Tennessee Tech's rule does not prohibit photography of records, the commenter indicated that if Tennessee Tech does ban photography, that ban must be promulgated as part of the rule.

**Response:** Tennessee Tech does not prohibit the use of cellphones to photograph records. Tennessee Tech has added a provision to the rule that allows a requestor to use a personal cellphone to photograph up to 25 pages.

**Comment:** Tennessee Tech should accept a student id as proof of citizenship.

**Response:** Tennessee Tech declines to revise the rule for two reasons: First, a student id, by itself, is insufficient to prove citizenship or residency (see, e.g., requirements for voter registration or for a driver's license); second, Tennessee Tech does not wish to treat one class of requestors more favorably than another by accepting less proof of citizenship.

Tennessee Tech's rule is flexible enough to allow the use of a student id in combination with another document such as dorm address, utility bill, rental agreement, etc. to meet the citizenship requirement. Tennessee Tech's "Public Records Request" webpage lists a variety of documents that are acceptable proofs of citizenship for the purpose of accessing public records, as recommended as a best practice by the Office of Open Records Counsel.

### **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 rule is not anticipated to have an impact 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 rule is not anticipated to have an impact on local government.

**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;

Previously, Tennessee Tech adopted and followed the Open Records Counsel's model policy related to responding to requests for public records. This rule does not materially change Tennessee Tech's previous policy or processes for responding to such requests.

- (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. § 10-7-503(g)(2) requires state government entities to promulgate rules regarding public records that meet the requirements of T.C.A. § 10-7-503(g)(1).

- (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;

The Tennessee Tech Board of Trustees urges adoption. Individuals/entities that wish to review public records of the State of Tennessee are directly affected by this rule. Tennessee Tech believes the rule is consistent with the intent of the law, namely to create transparency in its operations. The Tennessee Coalition for Open Governments and the Society for Student Journalists have raised objections to the requirement that a requestor provide proof of Tennessee citizenship.

- (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;

Karen Lykins, Chief Communication Officer

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

Karen Lykins, Chief Communication Officer

- (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

1 William L. Jones Dr.  
Cookeville, TN 38505  
931-372-3084  
KLykins@tntech.edu

(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: 08-25-19  
Rule ID(s): 9235  
File Date: 8/30/19  
Effective Date: 11/28/19

# 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 Technological University
<b>Division:</b>	
<b>Contact Person:</b>	Karen Lykins
<b>Address:</b>	1 William L. Jones Dr., Cookeville TN
<b>Zip:</b>	38505
<b>Phone:</b>	931-372-3084
<b>Email:</b>	KLykins@tntech.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
0240-09-05	Access to Public Records
Rule Number	Rule Title
0240-09-05-.01	Scope
0240-09-05-.02	Definitions
0240-09-05-.03	General Policy Statement
0240-09-05-.04	Requesting Access to Public Records
0240-09-05-.05	Responding to Public Records Request
0240-09-05-.06	Redaction
0240-09-05-.07	Inspection of Records
0240-09-05-.08	Request for Copies of Records

RECEIVED  
STATE ATTORNEY GENERAL  
JUN 28 2019  
CRIMINAL APPEALS  
DIVISION

Rules  
Of  
Tennessee Technological University, Cookeville  
Chapter 0240-09-05  
Access to Public Records

New

Table of Contents is added to Chapter 0240-09-05 Access to Public Records and shall read as the follows:

0240-09-05.01 Scope  
0240-09-05.02 Definition  
0240-09-05.03 General Provision  
0240-09-05.04 Requesting Access to Public Records  
0240-09-05.05 Responding to Public Records Request  
0240-09-05.06 Redaction  
0240-09-05.07 Inspection of Records  
0240-09-05.08 Request for Copies of Records

0240-09-05-.01 Scope is added to Chapter 0240-09-05 Access to Public Records and shall read as follows:

0240-09-05-.01 Scope

- (1) This rule does not apply to a student's request to see his/her own education records or to an employee's or former employee's reasonable requests to review or copy his/her own personnel file.
- (2) Proof of Tennessee citizenship for the purpose of access to public records is not proof of residency for the purpose of classifying students as in-state or out-of-state when assessing tuition and fees and for admission purposes.

Authority: T.C.A. § 10-7-503(g)(2); T.C.A. § 49-8-203(a)(4).

0240-09-05-.02 Definitions is added to Chapter 0240-09-05 Access to Public Records and shall read as follows:

0240-09-05-.02 Definitions

- (1) Public Records: All documents, papers, letters, maps, books, photographs, microfilms, electronic data processing files and output, films, sound recordings, or other material, regardless of physical form or characteristics, made or received pursuant to law or ordinance or in connection with the transaction of official business by any governmental agency.
- (2) Public Records Request Coordinator ("Coordinator"): The designated individual who has the responsibility to ensure Public Record requests are routed to the appropriate records custodian and are fulfilled in accordance with the Tennessee Public Records Act.
- (3) Records Custodian: The office, official, or employee lawfully responsible for the direct custody and care of a Public Record.
- (4) Requestor: A person seeking access to a Public Record, whether it is for inspection or duplication.

Authority: T.C.A. § 10-7-503 (g)(2); T.C.A. § 49-8-203(a)(4).

0240-09-05-.03 General Policy Statement is added to Chapter 0240-09-05 Access to Public Records and shall read as follows:

0240-09-05-.03 General Policy Statement

- (1) Tennessee Tech shall timely and efficiently provide access and assistance to persons requesting to view or receive copies of Public Records as required by law.

Authority: T.C.A. § 10-7-503(g)(2); T.C.A. § 49-8-203(a)(4).

0240-09-05-.04 Requesting Access to Public Records is added to Chapter 0240-09-05 Access to Public Records and shall read as follows:

0240-09-05-.04 Requesting Access to Public Records

- (1) Public Record requests should be directed to the Coordinator or his/her designee in order to ensure Public Record requests are routed to the appropriate Records Custodian and fulfilled in a timely manner.
- (2) Requestor may contact the Coordinator in person, by telephone, by email, or by mail.
- (3) Tennessee Tech will publish the name, telephone number, email address, and office location of the Coordinator on its website or similar publication.
- (4) Tennessee Tech will not require a Requestor to submit a request for inspection in writing, absent good cause.
- (5) Tennessee Tech will require proof of Tennessee citizenship by either a valid Tennessee driver's license or alternative acceptable form of identification as a condition to inspect or receive copies of Public Records.
- (6) No request is necessary for bid tabulations for Request for Proposals and Request for Quotes, which are posted regularly on Tennessee Tech's Purchasing and Contracts webpage. Similarly, meeting notices and materials for Tennessee Tech's Board of Trustees are posted on Tennessee Tech's Board webpage.

Authority: T.C.A. § 10-7-503(g)(2); T.C.A. § 49-8-203(a)(4).

0240-09-05-.05 Responding to Public Records Requests is added to Chapter 0240-09-05 Access to Public Records and shall read as follows:

0240-09-05-.05 Responding to Public Records Requests

- (1) The Coordinator shall, as necessary or appropriate:
  - (a) Request proof of Tennessee citizenship;
  - (b) Clarify the scope of the request;
  - (c) Advise the Requestor that Tennessee Tech may charge for copies if the request exceeds the costs threshold allowed by its rule;
  - (d) Advise the Requestor that Tennessee Tech is not the custodian of the record;
  - (e) Provide the records;
  - (f) Deny the request in writing, providing the appropriate basis, such as one of the following:
    1. The Requestor is not a Tennessee citizen or has not presented evidence of Tennessee citizenship;
    2. The request lacks specificity;
    3. An exemption makes the record not subject to disclosure under the Tennessee Public Records Act;
    4. The records do not exist.
- (2) The Coordinator may deny the request provided the Coordinator has identified in writing the specific legal

basis for the denial of the request.

- (3) The Coordinator may, if appropriate, contact the Requestor to see if the request can be narrowed.
- (4) If requested records are in the custody of a different governmental entity and the Coordinator knows the correct governmental entity, the Coordinator may direct the Requestor to the correct governmental entity.
- (5) A Records Custodian must promptly forward a request to the Coordinator and assist the Coordinator in making the records available to the Requestor in a timely manner.
- (6) If not practicable to promptly provide requested records because additional time is necessary to determine whether the requested records exist; to search for, retrieve, or otherwise gain access to records; to determine whether the records are open, to redact records; or for other similar reasons, then the Coordinator shall, within seven (7) business days from the receipt of the request, send the Requestor a completed Public Records Response Form.
- (7) If the Coordinator reasonably determines production of records should be segmented because the Public Records Request is for a large volume of records, or additional time is necessary to prepare the records for access, the Coordinator shall notify the Requestor in writing that production of the records will be in segments and that a records production schedule will be provided as expeditiously as practicable. If appropriate, the Coordinator may contact the Requestor to see if the request can be narrowed.
- (8) If the Coordinator discovers records responsive to a records request were omitted, the Coordinator will notify the Requestor and produce the records as quickly as practicable.

Authority: T.C.A. § 10-7-503 (g)(2); T.C.A. § 49-8-203(a)(4).

0240-09-05-.06 Redactions is added to Chapter 0240-09-05 Access to Public Records and shall read as follows:

0240-09-05-.06 Redaction

- (1) If a record contains confidential information that is not open for public inspection, the Coordinator, with assistance from the Records Custodian, shall redact the record prior to providing access.
- (2) Whenever the Custodian provides a redacted record, the Custodian will advise the Requestor of the general basis or bases for the redaction(s).

Authority: T.C.A. § 10-7-503(g)(2); T.C.A. § 49-8-203(a)(4).

0240-09-05-.07 Inspections of Records is added to Chapter 0240-09-05 Access to Public Records and shall read as follows:

240-09-05.08 Inspection of Records

- (1) Tennessee Tech will not charge for inspection of Public Records.
- (2) Tennessee Tech will advise the Requestor of the location where the records may be inspected.
- (3) The Coordinator may require an appointment for the inspection.

Authority: T.C.A. § 10-7-503(g)(2); T.C.A. § 49-8-203(a)(4).

0240-09-05-.08 Request for Copies of Records is added to Chapter 0240-09-05 Access to Public Records and shall read as follows:

0240-09-05-.08 Request for Copies of Records

- (1) The Coordinator will respond to a Public Record request for copies in the most economic and efficient manner practicable.

- (2) Copies will be available for pickup at a location specified by the Coordinator.
- (3) Tennessee Tech will not use fees and charges for copies of Public Records to hinder access to Public Records.
- (4) The Coordinator will provide Requestors with an estimate of the charges prior to producing copies of records and may require prepayment of such charges before producing requested records.
- (5) If fees for copies and labor do not exceed \$25, Tennessee Tech may waive those fees. Requests for waivers for costs that exceed \$25 must be presented to the Coordinator, who is authorized to determine if such waiver is in the best interest of Tennessee Tech or for the public good.
- (6) A Requestor may use a personal cellphone to take pictures of records when the total amount of pages to be photographed does not exceed twenty-five (25) pages.
- (7) Tennessee Tech will not waive fees associated with aggregated records requests.
- (8) A Requestor must pay by cash, credit card, or personal check made payable to Tennessee Tech and presented to the Coordinator or to the Tennessee Tech Business Office.
- (9) Tennessee Tech will aggregate record requests in accordance with the current office of Open Records Schedule for Reasonable Charges for Frequent and Multiple Requests when more than (4) requests are received within a calendar month either from a single individual or a group of individuals deemed working in concert.
- (10) If Tennessee Tech aggregates requests, the Coordinator will advise Requestors of the basis for the aggregation.

Authority: T.C.A. § 10-7-503(g)(2); T.C.A. § 49-8-203(a)(4)

\* 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)
Melissa Geist	X				
Trudy Harper	X				
Tom Jones	X				
Rhedona Rose	X				
Purna Saggurti	X				
Johnny Stites	X				
Teresa Vanhooser	X				
Barry Wilmore				X	

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Tech Board of Trustees on 06/20/2019, 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: 12/12/18

Rulemaking Hearing(s) Conducted on: 02/01/19

Date: 6-21-19

Signature: Karen Lykins

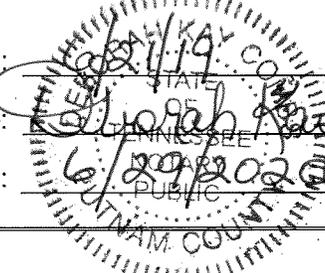
Name of Officer: Karen Lykins

Title of Officer: Chief Communication Officer

Subscribed and sworn to before me on: \_\_\_\_\_

Notary Public Signature: Shorah Kay Combs

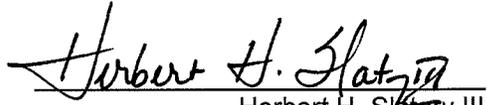
My commission expires on: 6/29/2020



Agency/Board/Commission: TTU

Rule Chapter Number(s): Public Records

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  
Attorney General and Reporter

7/26/2019  
Date

**Department of State Use Only**

Filed with the Department of State on: 8/30/19

Effective on: 11/28/19



Tre Hargett  
Secretary of State

RECEIVED  
2019 AUG 30 AM 11:13  
SECRETARY OF STATE  
ADMINISTRATIVE

## G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Financial Institutions

DIVISION: Administrative

SUBJECT: Public Records Requests, Fees

STATUTORY AUTHORITY: Public Chapter 784 of the Public Acts of 2018

EFFECTIVE DATES: December 29, 2019 through June 30, 2020

FISCAL IMPACT: None

STAFF RULE ABSTRACT: Although this new rulemaking hearing rule will affect any person, firm, or corporation who makes a public records request to the Department pursuant to Tennessee Code Annotated, Section 10-7-503, the promulgation of this rule will not significantly change how the Department responds to public records requests.

NOTE: Rule not submitted in redline form. Entire rule contains new language.

## Public Hearing Comments

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

On March 25, 2019, the Department of Financial Institutions held a rulemaking hearing regarding the proposed Rules and Regulations for Access to Public Records, Chapter 0180-34.

At the hearing, one speaker, Deborah Fisher, Executive Director of the Tennessee Coalition for Open Government, presented comments. The record was held open for an additional two (2) weeks for further written comments to be submitted. No written comments were received during the comment period or the two week additional period.

**Comment:** The Department's requirement of a Tennessee driver's license or photo ID card to prove Tennessee citizenship to receive documents overall hinders and thwarts access to public records. Additional ways to prove Tennessee citizenship should be considered.

**Response:** The Tennessee Public Records Act (TPRA), specifically in TCA § 10-7-503(a)(2)(A), requires that state records be open for inspection during business hours "by any citizen of this state" and, therefore, makes clear that "only Tennessee citizens have an enforceable right to access public records". See, Office of Open Records Counsel Best Practices & Guidelines. Moreover, the TPRA, in TCA § 10-7-503(a)(7)(A)(vi), states that a governmental entity may require any person making a public record request to present government-issued photo identification or other forms of identification acceptable to the governmental entity.

The Department's proposed rule, requiring proof of Tennessee citizenship by presentation of a valid Tennessee driver's license or a Tennessee photo ID card is certainly consistent with the TPRA. The Department has, however, added a provision to the proposed rule to provide that the Department may also accept other alternative forms of identification acceptable to the Public Records Request Coordinator to prove Tennessee citizenship.

**Comment:** Producing large records requests in installments is a way to improve the speed of providing records; however, the requestor should have the option of getting all of the records at one time.

**Response:** The TPRA requires public records to be made "promptly" available. See, TCA § 10-7-503(a)(2)(B). However, in instances where requests are for large volumes of records or where the request may take longer for other reasons, the prompt production of those records may simply not be practicable. Instead of waiting to provide access until all records are available, the Department's proposed rule, in providing for production in installments, ensures the requestor a more speedy and prompt access to records. Moreover, the Department's proposed rule on installments is consistent with the Office of Open Records Counsel Model Public Records Policy. The Department declines to make this change.

**Comment:** Allowing seven days to deny a records request because of an exemption could delay the records requestor from resolving the exemption, such as failure to prove Tennessee citizenship.

**Response:** The Department's proposed rule provides that the Department shall, if appropriate, deny a request in writing, in whole or in part, providing the appropriate grounds, "within seven (7) business days" and is consistent with the TPRA, specifically TCA § 10-7-503 (a)(2)(B)(ii). The Department declines to make this change.

**Comment:** The Department should allow people to use their cell phones to take pictures of public records.

**Response:** The Department has amended its proposed rule to allow the use of cell phones and handheld cameras to take pictures of public records.

Comment: The use of an outside copying vendor could make it cost prohibitive for a requestor to get copies of public records.

Response: There may be instances where the Department does not have the internal ability to make copies of records. Therefore, consistent with the Office of Open Records Counsel Model Policy and the Office of Open Records Counsel Best Practices & Guidelines, the Department may need to utilize an outside vendor. Note, however, that the Department's proposed rule, does adhere to the Office of Open Records Counsel's Schedule of Charges and does require the Department to provide the requestor with an itemized estimate of the fess, to the extent possible, prior to producing records. Moreover, note also that the Department has amended its proposed rule to state that no fees for copies shall be charged for requests of public records up to ten (10) pages in length and that the Department may provide the requested public record(s) in an electronic format. The Department declines to make this change.

## **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 will not have any impact on small business.

## **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 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;

Public Chapter No. 712 of the Public Acts of 2018 amended the Tennessee Public Records Act (TPRA), requiring state government entities to promulgate rules regarding public records requests by January 1, 2019. Specifically, Public Chapter No. 712 amended T.C.A § 10-7-503(g) to require state governmental entities to promulgate rules that shall include:

- (A) The process for making requests to inspect public records or receive copies of public records and a copy of any required form;
- (B) The process for responding to requests, including redaction practices;
- (C) A statement of any fees charged for copies of public records and the procedures for billing and payment; and
- (D) The name or title and the contact information of the individual or individuals within such governmental entity designated as the public records request coordinator.

On June 30, 2017, the Department established a written public records policy, which these rules will replace. The rules include the provisions required by § 10-7-503(g) and provide in pertinent part as follows:

- State that the purpose of the rules is to establish procedures, in accordance with T.C.A. § 10-7- 503(g), to accommodate requests from the public to inspect or obtain copies of public records maintained by the Tennessee Department of Financial Institutions (Department) while at the same time preserving the confidentiality of confidential records or information as provided in state and federal law.
- Provide that public records requests shall be made to the Public Records Request Coordinator (PRRC) and that the Department's PRRC is the General Counsel.
- State that requests for copies shall be made in writing to the PRRC, and that requests for inspection only may be made orally or in writing.
- Require proof of Tennessee citizenship in order to inspect or receive copies of public records.
- With respect to responding to public records requests, the rules require that requested public records be made available promptly or that the PRRC respond, within seven (7) business days, that more time is needed to respond; that the production of the records shall be in installments; or that the public records request is being denied, in whole or in part, because of an applicable exemption.
- Allow for redaction of records that contain confidential or privileged information and state that the basis for redaction should be provided.
- For inspection of records only, there is no charge and, a requestor is not allowed to make copies with personal equipment during inspection except for the use of a cell phone or handheld camera.
- Provide that inspection of records shall take place at the Department's offices and that an appointment for inspection is required.
- On fees for copies, the requestor is to be provided an itemized estimate of fee, to the extent possible, and fees for copies are based on the "Schedule of Reasonable Charges" issued by the Office of Open Records Council. Payment for copies is required in advance. No fees for copies for up to ten (10) pages.
- State that, in addition to copy fees, labor charges shall be imposed, if labor exceeds one hour, and that, if records are delivered by mail, the costs of delivery shall be included. Also, permits the Department to assess actual costs for an outside copying vendor if used.
- State that the Department will not aggregate records requests when more than four (4) requests are received within a calendar month.

- (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 No. 712 amended the TPRA, specifically T.C.A. § 10-7-503(g), requiring state government entities to promulgate rules setting forth processes, procedures and fees for public records requests by January 1, 2019.

T.C.A. § 45-1-107(h) grants the commissioner of the Department the power to enact reasonable substantive and

procedural rules to carry out the purpose of any and all chapters within the commissioner's regulatory authority as conferred by law.

- (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;

Although this new rule will affect any person, firm, or corporation who makes a public records request to the Department pursuant to T.C.A. § 10-7-503, the promulgation of this rule will not significantly change how the Department responds to public records requests.

- (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 that 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 will be no probable increase or decrease in state and local government revenues and expenditures resulting from this new rule.

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

Troy McPeak, Assistant General Counsel  
Todd Staley, Assistant General Counsel

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

Troy McPeak, Assistant General Counsel  
Todd Staley, 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

Troy McPeak, Assistant General Counsel  
Tennessee Tower, 26<sup>th</sup> Floor  
312 Rosa L. Parks Avenue  
Nashville, TN 37243  
615-854-0318  
[Troy.McPeak@tn.gov](mailto:Troy.McPeak@tn.gov)

Todd Staley, Assistant General Counsel  
Tennessee Tower, 26<sup>th</sup> Floor  
312 Rosa L. Parks Avenue  
Nashville, TN 37243  
615-428-2184  
[Todd.Staley@tn.gov](mailto:Todd.Staley@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  
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: 09-40-19  
Rule ID(s): 9257  
File Date: 9/30/19  
Effective Date: 12/29/19

# 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 Financial Institutions
<b>Division:</b>	Administrative Division
<b>Contact Person:</b>	Troy McPeak, Assistant General Counsel
<b>Address:</b>	Tennessee Tower, 26 <sup>th</sup> Floor, 312 Rosa L. Parks Avenue, Nashville, TN
<b>Zip:</b>	37243
<b>Phone:</b>	615-854-0318
<b>Email:</b>	Troy.McPeak@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
0180-34	Public Records Requests
Rule Number	Rule Title
0180-34-.01	Purpose
0180-34-.02	Definitions
0180-34-.03	Requesting Access to Public Records
0180-34-.04	Responding to Public Records Requests

Chapter Number	Chapter Title
0180-34	Public Records Requests
Rule Number	Rule Title
0180-34-.05	Inspection of Records
0180-34-.06	Copies of Records
0180-34-.07	Fees and procedures for Billing and Payment

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 <https://sos.tn.gov/products/division-publications/rulemaking-guidelines>.

#### 0180-34-.01 Purpose.

- (1) The Tennessee Public Records Act, in T.C.A. § 10-7-503(a)(2), provides that public records shall, at all times during business hours, be open for personal inspection by any citizen of this state, and those in charge of the records shall not refuse such right of inspection to any citizen, unless otherwise provided by state law.
- (2) The purpose of these rules is to establish procedures to accommodate requests from the public to inspect or obtain copies of public records maintained by the Tennessee Department of Financial Institutions to the extent that such public records are open to inspection by citizens of this state under the Tennessee Public Records Act, while at the same time preserving the confidentiality of confidential records or confidential information as provided in state or federal law.
- (3) Pursuant to T.C.A. § 10-7-503(g), these rules provide for:
  - (a) The process for making requests to inspect public records or receive copies of public records and a copy of any required request form;
  - (b) The process for responding to requests, including redaction practices;
  - (c) A statement of any fees charged for copies of public records and the procedures for billing and payment; and
  - (d) The name or title and the contact information of the individual or individuals within the Tennessee Department of Financial Institutions designated as the public records request coordinator.
- (4) Consistent with the Tennessee Public Records Act and these rules, personnel of the Tennessee Department of Financial Institutions shall timely and efficiently provide access and assistance to Tennessee citizens requesting to view or receive copies of public records. No provisions in these rules shall be used to hinder access to open public records. However, the integrity and organization of public records, as well as the efficient and safe operation of the Tennessee Department of Financial Institutions, shall be protected as provided by state or federal law.
- (5) Concerns about the implementation of these rules should be addressed to the Public Records Request Coordinator for the Tennessee Department of Financial Institutions or to the Office of Open Records Counsel.

Authority: T.C.A. §§ 10-7-503 and 45-1-107(h).

#### 0180-34-.02 Definitions.

- (1) "Department" means the Tennessee Department of Financial Institutions.
- (2) "Office of Open Records Counsel" or "OORC" means the office established under T.C.A. § 8-4-601, et seq., within the Tennessee Comptroller of the Treasury.
- (3) "Public Records" means all documents, papers, letters, maps, books, photographs, microfilms, electronic data processing files and output, films, sound recordings, or other material, regardless of physical form or characteristics, made or received pursuant to law or ordinance or in connection with the transaction of official business by any governmental entity.
- (4) "Public Records Request Coordinator" or "PRRC" means the individual, or individuals, designated in Rule 0180-34-.03, who has, or have, the responsibility to ensure that public record requests are

routed to the appropriate records custodian and that requests are fulfilled in accordance with the Tennessee Public Records Act. The PRRC may also be a records custodian.

- (5) "Records Custodian" means any office, official or employee lawfully responsible for the direct custody and care of a public record. The records custodian is not necessarily the original preparer or receiver of the record.
- (6) "Requestor" means a person seeking access to a public record, whether it is for inspection or duplication.
- (7) "Tennessee Public Records Act" or "TPRA" means the state law codified in T.C.A. § 10-7-503, et seq., regarding access to public records.

Authority: T.C.A. §§ 10-7-503 and 45-1-107(h).

#### 0180-34-.03 Requesting Access to Public Records.

- (1) Public record requests shall be made to the PRRC or designee in order to ensure public records requests are routed to the appropriate Records Custodian and fulfilled in a timely manner.
- (2) The designated PRRC for the Department is the General Counsel; provided, however, that the responsibilities of the PRRC under this rule may be delegated to one or more employees under the supervision of the PRRC. The PRRC may be contacted at:

Public Records Request Coordinator  
Tennessee Department of Financial Institutions  
Administrative Division/Legal Section  
312 Rosa L. Parks Avenue  
26<sup>th</sup> Floor, Tennessee Tower  
Nashville, Tennessee 37243  
Telephone: (615) 741-2236 or 800-231-7831  
Email: TDFI.contact@tn.gov

- (3) Requests only for inspection of public records may be made orally or in writing to the PRRC at the PRRC's mailing address, email address or phone number. The PRRC shall, however, request a U.S. mail address or email address from the Requestor in order to provide any written communication required under the TPRA.
- (4) Requests for copies, or requests for inspection and copies, shall be made in writing and may be made to the PRRC at the mailing address or email address provided.
- (5) Proof of Tennessee citizenship by presentation of a valid Tennessee driver's license or a Tennessee photo ID card (or alternative form of identification acceptable to the PRRC) is required as a condition to inspect or receive copies of public records.
- (6) The Department makes certain information, records, and forms available to the public on the Department's website at [www.tn.gov/tdfi](http://www.tn.gov/tdfi). Examples of the types of information regularly posted online by the Department include, but are not limited to, the announcement of the maximum effective formula rates of interests, the maximum effective rates of interest on home loans, the Department's annual report, a listing of chartered and licensed entities regulated by the Department, bank application information and application reports, the biennial report on the title pledge lending industry, formal actions pertaining to non-depository financial institutions regulated by the Department's Compliance Division that have been subject to a hearing, Department bulletins and the Department's consumer complaint form.

Authority: T.C.A. §§ 10-7-503 and 45-1-107(h).

#### 0180-34-.04 Responding to Public Records Requests.

- (1) Public Records Request Coordinator

- (a) The PRRC, or an employee under the supervision of the PRRC, shall review public records requests and make an initial determination of the following:
  1. If the Requestor provided evidence of Tennessee citizenship;
  2. If the records requested are described with sufficient specificity to identify them; and
  3. If the Department is the custodian of the requested records.
  
- (b) The PRRC, or an employee under the supervision of the PRRC, shall acknowledge receipt of the request and take the following actions, if appropriate:
  1. Advise the Requestor of any determinations regarding proof of Tennessee citizenship;
  2. If appropriate, deny the request in writing, in whole or in part, providing the appropriate ground(s), such as one or more of the following:
    - (i) The Requestor is not, or has not presented evidence of being a Tennessee citizen;
    - (ii) The request lacks specificity or needs clarification;
    - (iii) The Department is not the custodian of the requested records;
    - (iv) The records requested are not subject to inspection under state or federal law; or
    - (v) The requested records do not exist.
  3. If appropriate, contact the Requestor to see if the request can be narrowed or clarified;
  4. Forward the public records request to the appropriate Records Custodian(s) in the Department with notice of the date the request was received and the deadline for when a response to the request is due; or
  5. If requested records are in the custody of a different governmental entity, and the PRRC knows the correct governmental entity, advise the Requestor of the correct governmental entity, and PRRC for that entity, if known.

(2) Records Custodian

- (a) Upon receiving a public records request from the PRRC, if the requested records are practicably available and not exempt from disclosure, a Records Custodian shall promptly make the requested public records available pursuant to T.C.A. § 10-7-503(a)(2)(B)(i). If the Records Custodian is uncertain that an applicable exemption applies, the Records Custodian may consult with the PRRC or the Office of the Tennessee Attorney General and Reporter.
  
- (b) If a Records Custodian determines that it is not practicable to promptly provide requested records because additional time is necessary to determine whether the requested records exist; to search for, retrieve, or otherwise gain access to records; to determine whether the records are open or confidential; to redact the records; or for other similar reasons, the Records Custodian shall inform the PRRC. The PRRC shall then, within seven (7) business days from the PRRC's receipt of the request, send the Requestor a completed public records request response, pursuant to T.C.A. § 10-7-503(a)(2)(B)(iii).
  
- (c) If a Records Custodian reasonably determines that production of records should be in installments, the Records Custodian shall inform the PRRC, who shall, within seven (7) business days from the PRRC's receipt of the request, send the Requestor a public records request response informing the Requestor that the production of records will be in installments and that a records production schedule will be provided as expeditiously as practicable.

- (d) If a Records Custodian determines that a public records request should be denied because of an applicable exemption, the Records Custodian shall inform the PRRC, who shall, within seven (7) business days from the PRRC's receipt of the request, deny the request in writing, as provided in subparagraph (1)(b) above, pursuant to T.C.A. § 10-7-503 (a)(2)(B)(ii).
- (e) If a Records Custodian discovers public records responsive to a public records request were omitted in a production, the Records Custodian shall notify the PRRC, who shall contact the Requestor concerning the omitted documents and produce those public records as quickly as practicable.

### (3) Redaction

- (a) If a record contains confidential or privileged information or information that is not open for public inspection, the Records Custodian shall prepare a redacted copy prior to providing access. If questions arise concerning redaction, the Records Custodian should coordinate with the PRRC or other appropriate parties regarding review and redaction of records. The Records Custodian and the PRRC may also consult with the Office of the Tennessee Attorney General and Reporter.
- (b) Whenever a redacted record is provided, a Records Custodian or PRRC should provide the Requestor with the basis for the redaction. The basis shall be general in nature and not disclose confidential or privileged information. A Records Custodian is otherwise not required to provide any sort of privilege log.

Authority: T.C.A. §§ 10-7-503 and 45-1-107(h).

#### 0180-34-.05 Inspection of Records.

- (1) There shall be no charge for inspection of public records that are subject to inspection under the TPRA.
- (2) Inspection of records shall take place at the offices of the Tennessee Department of Financial Institutions, 312 Rosa L. Parks Avenue, 26<sup>th</sup> Floor, Tennessee Tower, Nashville, TN 37243. The location for inspection of records within the offices of the Tennessee Department of Financial Institutions shall be determined either by the PRRC or the appropriate Records Custodian.
- (3) Appointments for inspection of public records are required and may be scheduled by contacting the PRRC at [TDFI.Contact@tn.gov](mailto:TDFI.Contact@tn.gov) or 615-741-2236 or 800-231-7831.
- (4) The TPRA grants Tennessee citizens the right to access open public records that exist at the time of the request. Nothing in the TPRA or these rules shall be construed as requiring a Records Custodian or the PRRC to sort through files to compile information or to create or recreate a record that does not exist.

Authority: T.C.A. §§ 10-7-503 and 45-1-107(h).

#### 0180-34-.06 Copies of Records.

- (1) A Records Custodian shall promptly respond to a public records request for copies.
- (2) Copies will be available for pickup at the Tennessee Department of Financial Institutions, 312 Rosa L. Parks Avenue, 26<sup>th</sup> Floor, Tennessee Tower, Nashville, TN 37243.
- (3) Upon payment for postage, copies will be mailed to the Requestor's home address by the United States Postal Service.
- (4) Except for the use of a cell phone or handheld camera, a Requestor will not be allowed to make copies of records with personal equipment including, but not limited to, portable scanners or portable copy machines.

Authority: T.C.A. §§ 10-7-503 and 45-1-107(h).

0180-34-.07 Fees and Procedures for Billing and Payment.

- (1) Fees for copies of public records shall not be used to hinder access to public records.
- (2) Prior to producing copies of records, a Records Custodian or the PRRC shall provide a Requestor with an itemized estimate of the fees and charges, to the extent possible.
- (3) Payment in advance is required for all requests for copies of records.
- (4) Fees for copies are as follows:
  - (a) 15 cents (\$0.15) per page for 8 ½" x 11" (letter) or 8 ½" x 14" (legal) black and white copies.
  - (b) 50 cents (\$0.50) per page for 8 ½" x 11" (letter) or 8 ½" x 14" (legal) color copies.
  - (c) No fees for copies shall be charged for requests of public records up to ten (10) pages in length.
- (5) In addition to the copy fees described in paragraph (4) above, labor charges for the time, in hours, to produce copies of records shall be imposed whenever the time exceeds one (1) hour. Labor charges shall be calculated by multiplying the base hourly wage rate of each employee by the time each employee spends in identifying, locating, and copying the records, minus the first hour of the most highly paid employee.
- (6) At the Department's discretion, an outside copying vendor may be used to make copies of the requested records. If so, an employee of the Department shall transport the records to and from the vendor and maintain custody of the records at all times. The Requestor shall pay the actual costs assessed by the vendor and any applicable labor charges as provided in paragraph (5) above.
- (7) Payment is to be made by cashier's check or money order made payable to the Tennessee Department of Financial Institutions.
- (8) The Department may provide the requested public record(s) in an electronic format.
- (9) The Department will not aggregate records requests when more than four (4) requests are received within a calendar month, either from a single individual or a group of individuals deemed working in concert and adopts the "Frequent and Multiple Request Policy" and any successor policy developed by the Office of Open Records Counsel.

Authority: T.C.A. §§ 10-7-503 and 45-1-107(h).

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

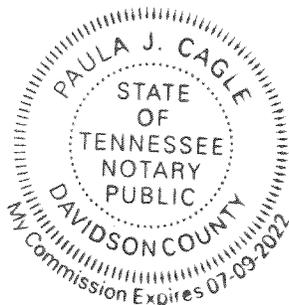
Board Member	Aye	No	Abstain	Absent	Signature (if required)

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 8-27-19 (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: 01/14/2019

Rulemaking Hearing(s) Conducted on: (add more dates). 03/25/2019



Date: 8-27-19

Signature: [Handwritten Signature]

Name of Officer: Greg Gonzales

Title of Officer: Commissioner

Subscribed and sworn to before me on: 8/27/19

Notary Public Signature: Paula J. Cagle

My commission expires on: 07/09/2022

Agency/Board/Commission: Tennessee Department of Financial Institutions

Rule Chapter Number(s): 0180-34

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. Slattery III  
Attorney General and Reporter  
9/18/2019  
Date

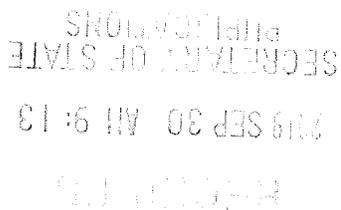
**Department of State Use Only**

Filed with the Department of State on: 9/30/19

Effective on: 12/29/19

[Handwritten Signature]

Tre Hargett  
Secretary of State



## G.O.C. STAFF RULE ABSTRACT

<u>BOARD:</u>	Education
<u>SUBJECT:</u>	Course Access Program
<u>STATUTORY AUTHORITY:</u>	Public Chapter 784 of the Public Acts of 2018
<u>EFFECTIVE DATES:</u>	December 29, 2019 through June 30, 2020
<u>FISCAL IMPACT:</u>	None
<u>STAFF RULE ABSTRACT:</u>	This proposed rule effectuates the Course Access Program Act, a school choice program that gives students across the state the same access to certain "course access courses" that may not otherwise be available at their school. This rule outlines the eligibility requirements for students, the course provider approval process, the course approval process, the allocation and flow of funds, monitoring and reporting requirements, and the roles of the State Board, the Department of Education, and local education agencies (LEAs).

## **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 have a financial impact on local governments beyond the requirement in law that the Home LEA transfer funding to the Host LEA for each participating student. For additional information, see the fiscal note attached to the original and updated legislation.

## **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 business.

**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 effectuates the Course Access Program Act, a school choice program that gives students across the state the same access to certain "course access courses" that may not otherwise be available at their school. This rule outlines the eligibility requirements for students, the course provider approval process, the course approval process, the allocation and flow of funds, monitoring and reporting requirements, and the roles of the State Board, the Department of Education, and local education agencies (LEAs).

- (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. §§ 49-18-101 through 49-18-110 outlines the Course Access Program Act, passed into law in 2016. During the 2018 legislative session, the original legislation was significantly updated and in 2019, the legislation was updated again via Public Chapter 146 to reflect that students may take up to two course access program courses per school year.

Public Chapter 784 of the Public Acts of 2018 provides the State Board the authority to promulgate rules to implement the course access program.

- (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;

The Tennessee Department of Education and State Board of Education are directly affected by this rule and both urge adoption. Local Education Agencies and students in Tennessee public schools are also directly affected by this rule. No LEAs or students have contacted the State Board to urge adoption or rejection 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;

This rule does not have a financial impact on local governments beyond the requirement in law that the Home LEA transfer funding to the Host LEA for each participating student. For additional information, see the fiscal note attached to the original and updated legislation.

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

Angie Sanders  
[Angela.C.Sanders@tn.gov](mailto:Angela.C.Sanders@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;

Angie Sanders  
[Angela.C.Sanders@tn.gov](mailto:Angela.C.Sanders@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

Angie Sanders  
5<sup>th</sup> Floor, Davy Crockett Tower, 500 James Robertson Parkway  
Nashville, TN 27243  
(615) 253-5707  
[Angela.C.Sanders@tn.gov](mailto:Angela.C.Sanders@tn.gov)

Nathan James  
5<sup>th</sup> Floor, Davy Crockett Tower, 500 James Robertson Parkway  
Nashville, TN 27243  
(615) 532-3528  
[Nathan.James@tn.gov](mailto:Nathan.James@tn.gov)

Elizabeth Fiveash  
9<sup>th</sup> Floor, 710 James Robertson Parkway  
Nashville, TN 27243  
(615) 253-1960  
[Elizabeth.Fiveash@tn.gov](mailto:Elizabeth.Fiveash@tn.gov)

(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: 09-39-19  
 Rule ID(s): 9256  
 File Date: 9/30/19  
 Effective Date: 12/29/19

## 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>	Amy Owen
<b>Address:</b>	5 <sup>th</sup> Floor, Davy Crockett Tower, 500 James Robertson Parkway, Nashville, TN
<b>Zip:</b>	37243
<b>Phone:</b>	615-532-1776
<b>Email:</b>	Amy.Owen@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
0520-01-14	Course Access Program
Rule Number	Rule Title
0520-01-14-.01	Purpose
0520-01-14-.02	Definitions
0520-01-14-.03	Student Eligibility and Participation
0520-01-14-.04	Provider Eligibility and Approval
0520-01-14-.05	Course Approval
0520-01-14-.06	Allocation and Use of Funds
0520-01-14-.07	Reporting Requirements

RULES  
-OF  
THE STATE BOARD OF EDUCATION

CHAPTER 0520-01-14-  
COURSE ACCESS PROGRAM

TABLE OF CONTENTS

0520-01-14-.01 Purpose  
0520-01-14-.02 Definitions  
0520-01-14-.03 Student Eligibility and Participation  
0520-01-14-.04 Provider Eligibility and Approval

0520-01-14-.05 Course Approval  
0520-01-14-.06 Allocation and Use of Funds  
0520-01-14-.07 Reporting Requirements

**0520-01-14-.01 PURPOSE**

The purpose of these rules is to effectuate the Course Access Program Act as required by T.C.A. Title 49, Chapter 18.

**Authority:** T.C.A. §§ 49-18-101 through 49-18-110. *Administrative History:*

**0520-01-14-.02 DEFINITIONS**

- (1) "Blended learning" means the combination of virtual learning with the integration of in-person teaching practices. Blended learning occurs in a school building and can be teacher-led or involve the purchase or use of technology;
- (2) "Charter management organization" or "CMO" means a nonprofit entity that operates multiple charter schools, at least one (1) of which is in Tennessee;
- (3) "Charter school" means a Tennessee public charter school authorized to operate under T.C.A. Title 49, Chapter 13;
- (4) "Course access catalog" means a listing of providers that have been approved by the State Board and a listing of courses offered by approved providers, which are available to participating students;
- (5) "Course access course" means a course that has been approved by the State Board and that has been included in the listing of courses in the course access catalog and is offered by an approved course access provider;
- (6) "Course provider" or "provider" means a nonprofit entity, LEA, charter school or charter management organization, institution of higher education, or state agency, that has been approved by the State Board to offer individual courses in person or online and that has been included in the listing of providers in the course access catalog;
- (7) "Department" means the Tennessee Department of Education;
- (8) "Eligible student" means any student who is enrolled in a Tennessee public school, including a charter school, in grades seven through twelve (7-12);

(Rule 0520-01-14-.2, continued)

- (9) "Governing body of a home LEA" means the local board of education, if the home LEA is an LEA, or the governing body of a charter school, if the home LEA is a charter school;
- (10) "Home LEA" means the LEA or the charter school in which the student is enrolled full-time;
- (11) "Host LEA" means an LEA or a charter school offering course access program courses through an approved course provider to eligible students;
- (12) "Participating student" means any eligible student enrolled in a course access program course through a host LEA;
- (13) "State Board" means the State Board of Education.
- (14) "Virtual learning course" means a course in which a significant portion of instruction is delivered to students through the effective use of technology.

***Authority:*** T.C.A. §§ 49-18-101 through 49-18-110. *Administrative History:*

### **0520-01-14-.03 STUDENT ELIGIBILITY AND PARTICIPATION**

- (1) Students enrolled in a Tennessee public school, including a charter school, in grades seven through twelve (7-12) are eligible to participate in the course access program, provided:
- (a) The student meets all prerequisite requirements for the course access course; and
- (b) The student is unable to enroll in a comparable course at the student's school because either:
1. A comparable course is not offered; or
  2. A legitimate situation exists that prevents the student from enrolling in a comparable course.
- (2) Students with disabilities shall not be precluded from enrollment in a course access course based on their disabilities. Prior to the enrollment of a student with a disability into a course access course, the student's Individualized Education Program (IEP) team or Section 504 team shall meet to review the student's IEP or 504 plan to identify any additional services, accommodations, modifications, or assistive technology that may be needed to ensure equitable access in the course access course in order to ensure the provision of a free appropriate public education (FAPE).
- (3) The student's home LEA shall pay the required tuition and fees to the host LEA for the first two (2) course access courses in which a participating student enrolls per school year.
- (4) A student's home LEA may approve a student to take more than two (2) course access courses per school year. If the student's home LEA approves a student to take more than two (2) course access courses then:
- (a) The student shall be responsible for paying to the host LEA any required tuition and fees for all additional courses beyond the first two (2) courses; and
- (b) The home LEA shall award credit to the student upon successful completion of the additional courses.

(Rule 0520-01-14-.3, continued)

- (5) A home LEA may disapprove an eligible student's enrollment in a course access course if:
- (a) The student does not meet the prerequisite requirements for the course;
  - (b) A comparable course is offered and available to the student in the home LEA;
  - (c) The eligible student's enrollment in the course access course would exceed the requirements for a normal full course load in the home LEA; or
  - (d) Participation in the course access course is not logistically possible.
- (6) The governing body of a home LEA shall develop a policy for hearing appeals from denials of course access course enrollments.
- (7) Home LEAs shall inform students and their parents or legal guardians of their right to appeal, in writing, to the governing body of the home LEA any denial of course access course enrollment.
- (8) No student shall be required to enroll in a course access course.
- (9) A student may withdraw from a course access course within the withdrawal period in accordance with the host LEA's withdrawal procedures. Students who withdraw from a course access course shall enroll in a course in their home LEA to satisfy course load requirements.

***Authority:*** T.C.A. §§ 49-18-101 through 49-18-110. ***Administrative History:***

#### **0520-01-14-.04 PROVIDER ELIGIBILITY AND APPROVAL**

- (1) A nonprofit entity, LEA, charter school or charter management organization, institution of higher education, or state agency seeking approval as a course access provider shall submit an application to the Department by the deadline set by the Department.
- (a) The Department shall create a standard provider application which shall require, at a minimum, the following:
- 1. A data privacy policy that complies with all applicable state and federal student data privacy provisions, including, but not limited to, the Data Accessibility Transparency and Accountability Act; T.C.A. § 10-7-504; and the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. g 1232g);
  - 2. An assurance that all online information and resources for online or blended learning courses are fully accessible for students of all abilities and:
    - (i) All courses submitted for approval are reviewed to ensure the courses meet legal accessibility standards;
    - (ii) The provider has an accessibility online learning policy;
    - (iii) The provider has an Americans with Disabilities Act (ADA) Section 504 coordinator, a grievance policy, and provides annual notifications to all enrolled students;
    - (iv) The provider has policies and activities to ensure its organizational and course websites meet accessibility requirements; and

(Rule 0520-01-14-.4, continued)

- (v) The provider has no examination or test where a specific score is required to participate in course access courses beyond completion of prerequisite coursework or demonstrated mastery of prerequisite material;
- 3. Evidence of financial viability in compliance with guidelines determined by the Department.
- (2) The Department shall review all provider applications submitted in accordance with the application process and shall submit to the State Board recommendations for approval or denial. No provider applicant shall act as a course provider until approved by the State Board.
- (3) All decisions of the State Board concerning approval of provider applicants shall be final and not subject to appeal. However, a provider applicant that has been denied approval may submit a new application to the Department, in accordance with the approval process guidelines for the school year following the school year for which the application was denied.
- (4) All approved providers shall be included in the listing of providers in the course access catalog. In order to offer course access courses to students, an approved provider shall establish a partnership with a host LEA. No LEA shall be required to be a host LEA.
- (5) All approved providers shall be subject to all federal and state anti-discrimination laws;
- (6) Each approved provider shall:
  - (a) Electronically provide, in compliance with guidelines set by the Department, a detailed student record of enrollment, performance, course completion, and course grading information to the participating student's home LEA and to the Department;
  - (b) Comply with applicable virtual learning requirements established in T.C.A Title 49, chapter 16, if offering virtual learning courses;
  - (c) Comply with class size requirements established in T.C.A. § 49-1-104 and instructional and planning time requirements established by the State Board; and
  - (d) Ensure each teacher of a course access course is licensed to teach in this state and meets the qualifications to teach, including the requirement for annual evaluations, in compliance with the rules of the State Board.
- (7) A course provider may be excluded from the course access catalog at any time if the State Board or Department finds that a provider has failed to comply with state or federal law, the rules or policies of the State Board, or the procedures of the Department; if the provider violates its provider agreement; or if the terms of the provider's application for approval are no longer accurate.

**Authority:** T.C.A. §§ 49-18-101 through 49-18-110. **Administrative History:**

#### **0520-01-14-.05 COURSE APPROVAL**

- (1) Host LEAs shall partner with approved providers to offer course access courses approved by the State Board for inclusion in the course access catalog.
- (2) No LEA or charter school shall be required to be a host LEA.

(Rule 0520-01-14-.05, continued)

- (3) Host LEAs seeking to offer a course access course shall establish a local course review and approval process.
- (4) Each local course review and approval process shall ensure courses recommended to the Department for inclusion in the course access catalog:

  - (a) Align to the applicable state academic standards set by the State Board;
  - (b) Meet the instructional and academic rigor of a course that is provided in a traditional classroom setting;
  - (c) Are designed and implemented consistently with guidelines and procedures established by the Department;
  - (d) Are taught by a teacher who is properly licensed and endorsed in accordance with the rules of the State Board; and
  - (e) Are offered by an approved course provider included in the listing of providers in the course access catalog.
- (5) Course access courses shall not include courses with a state-required assessment.
- (6) The length of each course access course shall contribute to instructional time requirements such that each student enrolled in a course access course still meets the required 6.5 hours a day of instruction.
- (7) Courses that meet all requirements under T.C.A. § 49-18-106 and the local course review and approval process may be submitted to the Department for recommendation to the State Board for its approval and inclusion in the course access course catalog. Host LEAs shall submit locally approved courses to the Department with an assurance that the course has been reviewed in compliance with this rule and T.C.A. § 49-18-106.
- (8) Courses approved locally shall be submitted in the school year prior to implementation by the deadline set by the Department.
- (9) The Department shall review all locally approved courses submitted in accordance with the local course review and approval process and shall submit to the State Board recommendations for approval or denial. A course shall not be included in the course access catalog until approved by the State Board.
- (10) A course included in the course access catalog shall be available to eligible students in any home LEA.
- (11) A home LEA shall award credit to a student upon successful completion of an approved course access course.
- (12) The Department shall publish a link to the course access catalog in a prominent location on the Department's website. The course access catalog shall include:

  - (a) A list of approved course providers;
  - (b) A list of courses offered by approved providers available through the course access program;

(Rule 0520-01-14-.05, continued)

- (c) A detailed description of the courses; and
  - (d) All available student course completion and outcome data in a manner that protects student privacy in compliance with T.C.A. Title 49, Chapter 1, Part 7, the Data Accessibility Transparency and Accountability Act (T.C.A. § 10-7-504), and the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g).
- (13) The State Board may exclude a course from the course access catalog at any time if the course provider is excluded from the course access catalog, or if a home LEA, the host LEA, or the Department:
- (a) Submits evidence to the State Board that:
    - 1. The course is no longer adequately aligned with the approved state academic standards;
    - 2. The course fails to meet the minimum requirements of the State Board; or
    - 3. The course no longer complies with the course approval requirements set forth in paragraph (4)(a)-(e) above; and
  - (b) Requests, in writing, that the State Board exclude the course.

**Authority:** T.C.A. §§ 49-18-101 through 49-18-110. **Administrative History:**

#### **0520-01-14-.06 ALLOCATION AND USE OF FUNDS**

- (1) The student's home LEA shall pay the required tuition and fees to the host LEA for the first two (2) course access courses in which a participating student enrolls per school year.
- (2) Payment of tuition and fees for enrollment of an eligible student in a course access course shall be a proportionate share of the state and local Basic Education Program (BEP) per pupil amount of the home LEA.
- (3) At the time of enrollment, the home LEA shall provide fifty percent (50%) of the course fee to the host LEA offering the course access course. The remaining amount shall be paid to the host LEA by the home LEA upon the student's completion of the course.
- (4) If a student withdraws from the course access course during the withdrawal period the host LEA shall refund the home LEA the full amount paid by the home LEA.
- (5) The home LEA shall not be responsible for other costs associated with the course access course enrollment.

**Authority:** T.C.A. §§ 49-18-101 through 49-18-110. **Administrative History:**

#### **0520-01-14-.07 REPORTING REQUIREMENTS**

- (1) Approved providers shall annually report to the Department, in the manner directed by the Department, the following information:

(Rule 0520-01-14-.07, continued)

- (a) Detailed student records of enrollment, including state course code, teacher of record, and home LEA;
  - (b) Student performance, course completion rates, and course grading information for each subject area and grade level; and
  - (c) Additional information the Department deems necessary.
- (2) On an annual basis, a home LEA shall review the academic performance of the students enrolled in courses offered by a course provider to ensure that participating students are receiving instruction and curricula that are aligned with the state standards, as determined by the State Board, and that meet the requirements for graduation.
- (3) Subject to all state and federal student privacy laws, the Department shall make publicly available each year the following information concerning the course access program:
- (a) The number of students participating in the course access program and the total number of courses in which students are enrolled;
  - (b) The number of approved course providers;
  - (c) The number of approved courses and the number of students enrolled in each course;
  - (d) The number of courses available by subject and grade level;
  - (e) The number of students enrolled in courses by subject and grade level; and
  - (f) Student outcome data, including course completion rates and other approved measures.

**Authority: T.C.A. §§ 49-18-101 through 49-18-110. Administrative History:**

\* 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)
Nick Darnell	X				
Mike Edwards	X				
Bob Eby	X				
Gordon Ferguson	X				
Elissa Kim	X				
Lillian Hartgrove				X	
Wendy Tucker	X				
Darrell Cobbins	X				

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the TN State Board of Education on 07/26/2019 (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 ninety (90) days of the filing of the proposed rule with the Secretary of State.



Date: 8/28/19

Signature: Amy Owen

Name of Officer: Amy Owen

Title of Officer: Director of Policy and Research

Subscribed and sworn to before me on: 8/28/19

Notary Public Signature: C Griffin

My commission expires on: 3-8-21

Agency/Board/Commission: TN State Board of Education

Rule Chapter Number(s): 0520-01-14

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

9/18/2019

Date

**Department of State Use Only**

Filed with the Department of State on: \_\_\_\_\_

9/30/19

Effective on: \_\_\_\_\_

12/29/19

Tre Hargett

Tre Hargett  
Secretary of State

RECEIVED  
SEP 30 AM 9:56  
SECRETARY OF STATE  
PUBLICATIONS

## G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Emergency Medical Services Board

DIVISION:

SUBJECT: General Rules

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

EFFECTIVE DATES: December 22, 2019 through June 30, 2020

FISCAL IMPACT: None

STAFF RULE ABSTRACT: The amendment to Rule 1200-12-01 -.02(3)(h) deletes the existing language in its entirety and adds new language, which contains the new state standards approved by the Board for ambulance manufacturing. The amendment to Rule 1200-12-01-.02(4) deletes subparagraphs for vehicle requirements which are now found in state standards, while leaving the subparagraphs addressing marking, legends and logos, as well as electrical systems and neonatal transportation , which are not found in the new state standards. The amendment to Rule 1200-02-01-.13(2)(h)(5)(i)(II) adds a semicolon and the word "and." The amendment to Rule 1200-02-01-.13(2)(h)(5)(i)(III) creates a new item which requires high school seniors who are seeking admission to paramedic school and who are eligible for dual enrollment for college credit to be eighteen years of age within 90 days of completing their EMS training. Rule 1200-12-01-.14 is being deleted in its entirety and rewritten. Additionally, the rule title is being amended to read "Emergency Medical Services Standards and Categories for Licensed Ambulance Service and Mobile Prehospital Emergency Care."

## **Public Hearing Comments**

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

### **Comments on Rule 1200-12-01-.21. Destination Determination**

#### **Comment #1**

Dr. Nagy, Trauma Medical Director, Skyline Medical Center, expressed a concern with designating Level One trauma centers as the sole requirement for the Destination Guidelines. Citing the Orange Book of the American College of Surgeons ("ACS"), he stated that clinical capabilities of Level 1 and Level 2 trauma centers were equivalent and the only differences between the two levels were the requirements of Level 1 centers to provide education of medical students and residents, and to conduct research. He completely supports directing high-level injured patients to high-level trauma centers, but felt that putting specific Level 1 vs. Level 2 designation is restrictive and short-sighted given the knowledge, experience, and proximity to the occurrence of the EMS personnel, and felt that it restricts them in making the best determination regarding the destination.

Dr. Nagy later suggested using "the ACS verified centers" because the centers in the state are moving toward that designation. He went on to cite the use of the ACS definition by other states, specifically, Michigan, which uses "the closest appropriate Level 1 or Level 2 trauma center."

Dr. Nagy then clarified the difference between state level 1 and state level 2 trauma systems, as state level 2 centers do not require microsurgery nor must the surgeon be on-site, but within a 30 minute radius when on call.

#### **Response**

Tyler White made a motion to remove specific language referencing "Level 1 Trauma Center" and change it to "Highest level of trauma care in the system." He referenced Dr. Nagy's comments, stating that according to ACS standards, Level 1 and Level 2 centers are clinically equivalent. His intent was to allow EMS personnel discretion to stop at qualified Level 2 centers rather than pass them to reach the closest Level 1. He further stated that there is a push by a number of Tennessee facilities to obtain ACS verification and based on the rule changes, it appears that EMS wants to be aligned with the 2011 Field Decision Tree for Trauma Patients and should use similar language. This motion was amended by Dr. Brooks, to use specific language "most readily accessible" instead of highest level of care" to add clarity to which destination should be chosen. Donna Tidwell commented that Tennessee Level 2 certified trauma centers are inferior to the ACS Level 2 certification, and therefore we should not specifically state "Level 1 or Level 2 ACS Certified." She also stated that a rule is being promulgated which would allow ACS certified facilities to forgo seeking Tennessee certification. She was in agreement with using "the highest level of care."

Rob Seesholtz, Trauma System Manager, Office of EMS, who was asked the difference between ACS and State designated Level 2 centers acknowledged that there were differences, but stated that changes were currently being made in the rules which would address those differences. Mr. Ross asked Mr. Schultz if the rules were to use, "Level 1 or Level 2" language if that would be inclusive of ACS and state designations. Mr. Schultz responded by stating that distinction should be made by the Board. After considering Mr. Schultz and the remainder of Dr. Nagy's comments, the Board settled on the language "Level 1 or Level 2." It reasoned that destination determination decisions were made it clear when using the term Level 1 or Level 2 trauma in conjunction with the language regarding medical control.

### **Comments on Rule 1200-12-01-.02(4). Specialty Care Vehicle Requirements**

#### **Comment #1:**

Ms. Yeatman expressed a concern for vagueness in the wording of the Specialty Care Vehicle Requirements. She acknowledged the presence of explicit standards in Section (4) under the vehicle requirements section, but brought attention to its lack of inclusion of other applicable areas of the rules. Ms. Yeatman suggested that the rules should be more specific in all areas.

#### **Response:**

Director Tidwell responded by pointing out the adherence by ambulance transport systems to specialty care characteristics, and referenced its inclusion in the perinatal guidelines. She further stated that unless different standards are specified, the guidelines in 1200-12.01-.02(4) are the default. Director Tidwell further stated that the rule does not preclude the effectiveness of any other section of the rules regarding ambulance transports. Director Tidwell proposed that the Board should take action to address the vagueness if it felt it was necessary. No action was taken.

**Comments on Rule 1200-12-01-.14(3)(c)(2)(iii)**

**Comment #1**

Duplicative language in this section. Remove "a," add "s" to "AEMT," and delete the redundant "100% of the time."

**Response:**

This is stipulating that both members of the crew are always AEMTs. The purpose was to remove any discretion as to the configuration of the crew. All other grammatical errors will be corrected.

**Comments on Rule 1200-12-01-.14(7)(a)**

**Comment #1**

Should the instructor/coordinator have the level appropriate credentials to conduct an in-service?

**Response:**

Director Tidwell stated that the purpose of this rule is to ensure that the instructor/coordinator has to have an understanding of the needed documentation for audit purposes, not that the individual must instruct the in-service.

**Comments on Rule 1200-12-01-.14(3)(c)(3)**

**Comment #1:**

Regarding the volunteer ambulance services, Given the possibility of staffing difficulties in certain areas of the state to have two (2) EMTs on maintain 90% of calls, has there been an observable issue with departments meeting the 90% requirement during abnormal events, such as natural disasters?

**Response #2:**

No. There has been no discernable issue with meeting this requirement.

**Additional Comments and Re-vote on Rule 1200-12-01-.21**

On December 12, 2018, the Board of Emergency Medical Services voted to recall the rules and to rescind the changes as set out in the notice of rulemaking hearing, which was posted on the Secretary of State's website on April 10, 2018.

## 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 rules will not overlap, duplicate, or conflict with other federal, state, and local governmental rules.

- (2) **Clarity, conciseness, and lack of ambiguity in the rule or rules.**

The rules are as clear, concise and unambiguous as possible.

- (3) **The establishment of flexible compliance and/or reporting requirements for small businesses.**

N/A

- (4) **The establishment of friendly schedules or deadlines for compliance and/or reporting requirements for small businesses.**

N/A

- (5) **The consolidation or simplification of compliance or reporting requirements for small businesses.**

N/A

- (6) **The establishment of performance standards for small businesses as opposed to design or operational standards required in the proposed rule.**

The design or operational standards that are required in the proposed rules are necessary to ensure patient safety.

- (7) **The unnecessary creation of entry barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs.**

The rules do not create any unnecessary entry 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:** Emergency Medical Services Board

**Rulemaking hearing date:** June 20, 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:**

These rule amendments will affect all ambulance service providers in Tennessee as well as high school seniors wishing to become licensed by the Board. Businesses and local governments that operate ambulance services will bear the cost of these rules and high school seniors will benefit from these rules by being allowed admission into EMS educational institutions while still in high school.

- 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:**

Any projected reporting, recordkeeping or administrative costs associated with these rule amendments should be minimal as the Board already has processes in place for records associated with exam scores and destination determination reporting.

The Board is amending Rule 1200-12-01-.02(3)(h) to provide clarity to ambulance services and potentially reducing the cost of compliance with the Board's guidelines by giving ambulance services notice of which standards the Board will enforce.

- 3. Statement of the probable effect on impacted small businesses and consumers:**

Any small business or local governments that operate ambulance services may see a small increase in costs associated with the new guidelines for ambulance equipment. Any costs associated with the changes to destination determination procedures should also be minimal.

- 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 alternative methods of achieving the purpose and/or objectives of the proposed rule amendments.

- 5. Comparison of the proposed rule with any federal or state counterparts:**

**Federal:** Currently, the rules require ambulances to meet the "Star of Life" KKK A 1822 standards. While these federal manufacturing standards are being phased out, a new array of national manufacturing standards are currently being developed.

**State:** 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.**

These rules do not contain any exemptions 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)

Local governments that operate ambulance services may see a small increase in costs associated with the new guidelines for ambulance equipment; however, the destination determination rules should be cost neutral.

**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 amendment to Rule 1200-12-01-.02(3)(h) deletes the existing language in its entirety and adds new language, which contains the new state standards approved by the Board for ambulance manufacturing.

The amendment to Rule 1200-12-01-.02(4) deletes subparagraphs for vehicle requirements which are now found in state standards, while leaving the subparagraphs addressing marking, legends and logos, as well as electrical systems and neonatal transportation, which are not found in the new state standards.

The amendment to Rule 1200-02-01-.13(2)(h)(5)(i)(II) adds a semicolon and the word "and."

The amendment to Rule 1200-02-01-.13(2)(h)(5)(i)(III) creates a new item which requires high school seniors who are seeking admission to paramedic school and who are eligible for dual enrollment for college credit to be eighteen years of age within 90 days of completing their EMS training.

Rule 1200-12-01-.14 is being deleted in its entirety and rewritten. Additionally, the rule title is being amended to read "Emergency Medical Services Standards and Categories for Licensed Ambulance Service and Mobile Prehospital Emergency Care."

- (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;

These rule amendments will affect all ambulance service providers in Tennessee as well as high school seniors wishing to become licensed by the Board.

- (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 result in any increase or decrease in state or local government revenues or expenditures exceeding two percent.

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

Paul E. Richardson, 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;

Paul E. Richardson, 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, Paul.Richardson@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  
 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: 09-20-19  
 Rule ID(s): 9243  
 File Date: 9/23/19  
 Effective Date: 12/22/19

# 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>	Emergency Medical Services Board
<b>Division:</b>	
<b>Contact Person:</b>	Paul Richardson, Assistant General Counsel
<b>Address:</b>	665 Mainstream Drive, Nashville, Tennessee 37243
<b>Phone:</b>	615-741-1611
<b>Email:</b>	Paul.Richardson@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
1200-12-01	General Rules
Rule Number	Rule Title
1200-12-01-.02	Ambulance Safety, Design, and Construction Standards
1200-12-01-.13	EMT, AEMT and Paramedic Education Programs
1200-12-01-.14	Categories for Emergency Medical Services and/or Ambulance Service and Mobile Pre-hospital Emergency Care

Chapter Number	Chapter Title
1200-12-01	General Rules
Rule Number	Rule Title
1200-12-01-.02	Ambulance Safety, Design, and Construction Standards
1200-12-01-.13	EMT, AEMT and Paramedic Education Programs
1200-12-01-.14	Emergency Medical Services Standards and Categories for Licensed Ambulance Service and Mobile Prehospital Emergency Care

**RULES  
OF  
THE TENNESSEE DEPARTMENT OF HEALTH  
BUREAU OF HEALTH LICENSURE AND REGULATION  
DIVISION OF EMERGENCY MEDICAL SERVICES**

**CHAPTER 1200-12-01  
GENERAL RULES**

**TABLE OF CONTENTS**

1200-12-01-.01 Sanitation of Ambulance	1200-12-01-.12 Authorization of Emergency Medical Services Educators
1200-12-01-.02 Ambulance Safety, Design, and Construction Standards	1200-12-01-.13 EMT, AEMT and Paramedic Education Programs
1200-12-01-.03 Emergency Medical Services Equipment, Medications and Supplies	1200-12-01-.14 <u>Categories for Emergency Medical Services and/or Ambulance Service and Mobile Pre-hospital Emergency Care</u> <u>Emergency Medical Services Standards and Categories for Licensed Ambulance Service and Mobile Prehospital Emergency Care</u>
1200-12-01-.04 Emergency Medical Services (EMS) Personnel Certification and Licensure	1200-12-01-.15 Ambulance Service Records
1200-12-01-.05 Air Ambulance Standards	1200-12-01-.16 Emergency Medical First Responders
1200-12-01-.06 Schedule of Fees	1200-12-01-.17 Unethical Practices and Conduct
1200-12-01-.07 Insurance Coverage	1200-12-01-.18 Emergency Medical Dispatcher Standards
1200-12-01-.08 Emergency Medical Services Telecommunications	1200-12-01-.19 Automated External Defibrillator Programs
1200-12-01-.09 Ground Invalid Vehicle Standards	1200-12-01-.20 Training for Emergency Medical Services for Children
1200-12-01-.10 Ambulance Driver Qualifications	1200-12-01-.21 Destination Determination
1200-12-01-.11 Ambulance Service Operations and Procedures	

**1200-12-01-.01 SANITATION OF AMBULANCE.**

- (1) All ambulances operating pursuant to the provisions of T.C.A. Chapter 140 of Title 68, must meet the following standards. For the purpose of this regulation, the word "sanitary" shall mean the absence of dirt, dust, stains, odors, rodents, vermin, or foreign substances.
- (2) Patient Compartment
  - (a) Floor must be sanitary.
  - (b) Cabinets or storage areas must be sanitary.
  - (c) All material covering seats, and in headliner must be sanitary.
  - (d) All equipment in patient compartment must be clean and in workable condition.
  - (e) Windows must be clean, unbroken, and in workable condition.
  - (f) All doors leading into passenger compartment must open properly, close tightly with all handles working.
  - (g) Compartment must be watertight and free of drafts.
  - (h) All equipment must be contained in such a manner as to be sanitary at all times.
  - (i) Oxygen if present, must be medical grade and cylinder contain at all times at least 500 PSI.

(Rule 1200-12-01-.01, continued)

(3) Drivers Compartment

- (a) Must be sanitary.
- (b) All doors must open properly and close tightly with all handles working.
- (c) Windows and windshield must be clean and free of cracks.
- (d) Rear view mirror must be free of cracks.
- (e) Seat belts must be in place and in usable condition.
- (f) Compartment must be watertight and free of drafts.

**Authority:** T.C.A. §§ 68-140-501, 68-140-504, and 68-140-507. **Administrative History:** Original rule filed March 20, 1974; effective April 19, 1974. Amendment filed August 7, 2009; effective November 5, 2009.

**1200-12-01-.02 AMBULANCE SAFETY, DESIGN, AND CONSTRUCTION STANDARDS.**

- (1) All ambulances operating pursuant to the provisions of Chapter 140 of Title 68, Tennessee Code Annotated, must meet the following standards.
  - (a) All lights must function properly and in accordance with applicable federal and state motor vehicle laws and regulations pursuant to T.C.A. § 55-9-402.
  - (b) All emergency lights must function in the way in which they were designed to function.
  - (c) Emergency audible warning devices must function in the way in which they were designed to function.
  - (d) Body must be free of dents and rust.
  - (e) Tires must have at least four thirty-seconds inch (4/32") tread.
  - (f) Braking system must function properly and safely.
  - (g) Steering system must function properly.
  - (h) All safety devices must function properly.
  - (i) All equipment in the patient compartment must be adequately secured.
  - (j) Oxygen tanks must bear a current static pressure date.
  - (k) Exhaust system must function to original standards.
  - (l) Patient compartment must be free of safety hazards.
  - (m) All ambulances (and invalid vehicles) shall have an operating odometer.
  - (n) The owner or operating agent of the ambulance shall subject the vehicle to a periodic mechanical safety inspection which shall be documented for the department.
    - 1. Periodic mechanical safety inspection shall mean an inspection conducted at least annually, or every thirty-thousand (30,000) miles after a vehicle registers

(Rule 1200-12-01-.02, continued)

- two hundred thousand (200,000) miles, whichever first occurs. The inspector must attest that the vehicle is mechanically safe, roadworthy, and maintained to federal and state laws applicable for such vehicles.
2. Mechanical safety inspections shall be conducted by a mechanic with factory training and certification from the original (motor vehicle) equipment manufacturer or the equivalent certification for Emergency Vehicle Technicians (EVT) or from the Institute for Automotive Service Excellence (ASE) Mechanics certification.
  3. Mechanical safety inspections shall be conducted in addition to the vehicle and equipment inspections by EMS Division personnel, following the procedures identified in the form or electronic records format adopted by the board.
  4. Records of the periodic mechanical safety inspection shall be submitted upon the initial permit application to the Division of Emergency Medical Services, and shall be maintained for as long as the chassis is actively licensed or permitted. Such records and supporting documents consisting of repair orders and routine maintenance shall be available and submitted for inspection by an authorized representative of the department.
  5. Upon observation of possible mechanical safety defects by an authorized representative of the department, or upon citation from a law enforcement agency, a vehicle shall be subject to unscheduled inspection to verify safe operation.
  6. Upon failure of an inspection, an ambulance shall be immediately removed from service until such deficiencies are corrected that may in any way impair the safe operation of the ambulance or vehicle.
- (2) Design and Construction - Any vehicle permitted pursuant to Chapter 140 of Title 68 shall be maintained according to the standards and specifications that follow: Standards for Emergency Ambulance vehicles.
- (3) General Vehicle Requirements.
- (a) The ambulance service shall determine the color of the exterior surface of each ambulance; however, the roof of the patient compartment shall be white.
  - (b) The ambulance service shall ensure that a minimum of one (1) horizontal solid reflective stripe at least six (6) inches in width shall be displayed on the sides and rear, horizontal to the beltline of the ambulance extending below the window line.
  - (c) The ambulance service may display a chevron striping pattern in the rear of the vehicle, with a pattern of alternating diagonal elements at least six (6) inches in width. Chevron patterns shall comply with the Manual of Uniform Traffic Control Devices.
  - (d) Emblems and Markings.
    1. The ambulance service shall ensure that the following markings are displayed on each ambulance:
      - (i) The service name on each side of the ambulance with a minimum of four (4) inch contrasting reflective letters;
      - (ii) The word "ambulance" displayed in contrasting reflective block letters not less than six (6) inches in height placed on each side of vehicle;

(Rule 1200-12-01-.02, continued)

- (iii) The word "ambulance" on the rear of each vehicle in contrasting reflective block letters not less than four (4) inches in height;
  - (iv) A reflective "Star of Life" of not less than sixteen (16) inches in height on each side of the vehicle;
  - (v) A reflective "Star of Life" of not less than four (4) inches in height on each rear door (if single rear door or sliding door, one on either side or alongside of the word Ambulance);
  - (vi) A "Star of Life" on the vehicle roof of not less than thirty-two (32) inches in height;
  - (vii) Numerals and letters used as vehicle call numbers, fleet numbers or chassis numbers placed on the sides and rear of each vehicle between four (4) and fourteen (14) inches in height and in reflective letters contrasting with the vehicle background. Numerals displayed on the vehicle rooftop shall be at least ten (10) inches in height, reflective and contrasting with the vehicle background.
2. An ambulance service shall identify its ambulances with lettering or a service trademark or emblem identifying the service. The service emblem or lettering shall be prominently displayed and shall not be printed over or superimposed over the "Ambulance" lettering or "Star of Life" emblems otherwise required by these rules.
3. An ambulance service shall not display any lettering, decals, or emblem which state(s) or suggest(s) that the ambulance service is affiliated with a business, entity, or government if there is no such affiliation.
4. An ambulance service shall not state or suggest that it has an accreditation that the service has not attained or maintained.
5. An ambulance service shall not have any markings that are commercial endorsements or advertisements for products or services other than ambulance services or services provided by the ambulance service owner.
6. An ambulance service shall not have any markings on vehicles that indicate any contractual arrangements with other businesses, entities, or individuals.
7. An ambulance service may display decals or placards on vehicles for recognized public safety programs as approved by the Division.
8. An ambulance service may display lettering or decals which serve a functional and useful purpose, such as identifying specialty care capability or special community programs as approved by the Division.
9. Within six (6) months of the effective date of this rule, each licensed service shall file a written description of its ambulance color and marking scheme with the Division of Emergency Medical Services. This description shall include a photograph or commercial drawing of the front, side, and rear of a modified vehicle.

(Rule 1200-12-01-.02, continued)

- (i) All ambulances within the service upon the effective date of this rule shall be modified in accordance with the plan submitted within one (1) year of the adoption of such color and markings plan;
  - (ii) Ambulances placed into permitted service after the effective date of this rule and after a design plan is filed with the Division office, shall conform to the service's adopted color and markings plan;
  - (iii) If the color and/or marking scheme is subsequently modified, a revised description and photographs shall be filed by the ambulance service with the Division office, and all ambulances within the service shall be modified within one (1) year after adoption of the revised color and markings scheme.
  - (iv) Upon the effective date of this rule, ambulance services shall ensure that white vehicles with an orange stripe may continue in service until replaced or withdrawn from service.
- (e) An ambulance service shall ensure that each ambulance shall be equipped with flashing or oscillating warning lights on the front, sides, and rear of the vehicle, red in color, with a center-mounted white (clear) flashing light visible to the front. One or more amber flashing lights may be visible to the rear. Switching arrangements may provide either synchronized or alternating red warning lights on the front, sides, and rear of the vehicle. Warning lights shall meet minimum photometric standards as described in the Federal Star of Life Ambulance Specifications in effect at the time of end stage manufacture.
- (f) Each ambulance service shall ensure that each ambulance has communications and warning devices that shall include but not be limited to a two-way radio with State designated emergency medical telecommunications frequencies and an audible warning and public address system, as follows:
1. Two-way Radio (Mobile).

Mobile radio equipment shall include VHF capabilities at a minimum, as established in Rule 1200-12-01-.08 (EMS Telecommunications), or means of alternative compliance as established in Rule 1200-12-01-.08. Radio control functions for the VHF and dispatch radio shall be accessible to the vehicle operator. The medical communication radio (or radio controls) shall be available in the patient compartment and comply with the respective regional frequency use plans and radio standards as published in the State EMS Telecommunications Plan.
  2. Audible Warning and Public Address System.

A combination electronic siren with integral public address system and radio amplification shall be provided. Control functions shall provide public address, radio, manual, wail and yelp selections with remote siren control from the driver's position.
  3. An ambulance service may install a mechanical siren or air horn in emergency vehicles.
- (g) An ambulance service shall ensure that each vehicle's patient compartment has the following minimum dimensions:

(Rule 1200-12-01-.02, continued)

1. Inside height of at least 60 inches, floor to ceiling.
2. Inside length from compartment divider to rear door of at least 116 inches.

~~(h) Each ambulance service placing ambulances in service or obtaining an initial permit with a service in the State of Tennessee shall ensure ambulances are manufactured according to the Federal "Star of Life" KKK-A-1822 specification applicable on the date of manufacture. All ambulances must be maintained in accordance with the standards specified in effect upon their date of their end stage manufacture. Copies of applicable versions of the specifications are available at cost upon request from the Division office.~~

(h) Each ambulance service placing ambulances in service or obtaining an initial permit in the state of Tennessee shall ensure that ambulances are manufactured and maintained according to the ambulance safety, construction and design standards that were adopted by the board as of the date of final manufacture. Current board-approved standards are posted on the Division's web page at <https://www.tn.gov/content/dam/tn/health/events/Ambulance%20Equipment%20Specifications%20Effective%20%20July%202019%20draft%209.20.18.pdf>, or at any successor web address, and are hereby incorporated into this rule as if they were fully set out and stated herein. The effective date of any changes in the posted standards will be determined by the board.

~~(4) Special Vehicle Requirements.~~

(4) Specialty Care Vehicle Requirements.

~~Vehicles used exclusively for the provision of neonatal intensive care and transportation between medical facilities shall conform with the following standards for design and construction.~~

Vehicles used exclusively for the provision of specialty care response and/or transport shall conform with the board-approved ambulance safety, construction and design standards set out in paragraphs (1) through (3) of this rule, with the following exceptions:

~~(a) Exterior surfaces, emblems, and markings shall conform to specifications enumerated under subparagraph (3)(i), Federal Specification Ambulance-Emergency Medical Care Vehicle.~~

(a) Additional markings, legends, or logos may be used to identify the provider and purpose for specialty care vehicles, except that no letter shall exceed six inches in height. Legends identifying the specialty care provided, such as "Neonatal Intensive and Critical Care Transport," may be substituted for the word "Ambulance" in exterior markings.

~~(b) Additional markings, legends, or logos may be used to identify the provider and purpose for special vehicles, except that no letter shall exceed six inches in height. Legends such as "Neonatal Intensive and Critical Care Transport" may be substituted for the word "Ambulance" in exterior markings.~~

(b) Vehicle electrical systems shall be sufficient to sustain specialized equipment as verified by manufacturer's certificate. Units shall be equipped with a back-up power system sufficient to operate life support equipment in the event the main power system fails.

(Rule 1200-12-01-.02, continued)

- ~~(c) Warning lights and siren shall be furnished in accordance with Federal Specification Ambulance 3-14.6, except that side flood lights shall not be required.~~
- (c) Patient compartments, based on the vehicles' specialty care response, shall conform with the current Tennessee Perinatal Care System Guidelines for Transportation posted at <https://www.tn.gov/content/dam/tn/health/documents/GuidelinesTransportationPAC.pdf> or any successor site.
- (d) Vehicle crashworthiness shall be assured with roll-cage construction, evidenced by compliance with the Ambulance Manufacturer's Division Standards of the Truck Body and Equipment Association or comparable construction under written statement and performance bond by the manufacturer.
- (e) Doors shall provide access to the rear and curb-side of the patient compartment. Where the vertical lift distance of the patient loading area exceeds 28 inches, a ramp or electrical/hydraulic lift shall be furnished to facilitate patient loading.
- (f) Environmental systems on the unit shall meet heating/air conditioning standards as specified in Federal Specifications Ambulance.
- (g) Vehicle electrical systems shall be provided to furnish 110 volt AC power sufficient to sustain 3,000 watts at 60 cycles. The unit shall be equipped with a back-up power system sufficient to operate patient care equipment in the event of failure of the main power system. The 110 volt system shall incorporate a ground fault interrupter device for protection against electrical hazards.
- (h) Patient compartment shall be so designed to provide the following:
1. One transport incubator configured to allow observation from at least two sides of the patient which shall be capable of being secured in the vehicle.
  2. An open bed warmer to allow various stabilization procedures.
  3. Compartments for appropriate storage of materials such as culture media and medications.
  4. Fixtures to ensure proper hand cleansing during a transport.
  5. Illumination at the primary patient care area of at least 75 foot candles.
  6. Safety features, to include:
    - (i) Cabinet corners and latches, sculpted, padded, or recessed to prevent undue injury during sudden deceleration.
    - (ii) Safety devices shall include:
      - (I) A grab rail or hand strap, secured according to Federal Motor Vehicle Safety Standards for safety restraints.
      - (II) Safety belts shall be provided at all attendant seats.
      - (III) Safety restraint devices for infants for use when the vehicle is in motion.

(Rule 1200-12-01-.02, continued)

- (i) Patient care equipment shall include the means to provide and monitor mechanical ventilation, and an oxygen system with sufficient capacity to deliver a minimum continuous flow of 8 liters per minute for at least four hours. The installed oxygen system shall be capable of delivering specific monitored blended oxygen concentrations.
- (5) A licensed ambulance provider may operate a temporary ambulance upon a written acknowledgment from the Department's representative under the following conditions:
- (a) A vehicle used to replace a permitted ambulance, when the permitted vehicle has been removed from service for repair or maintenance, when such temporary vehicle is not owned or normally operated by the service; or
  - (b) A vehicle acquired to replace a permitted ambulance, with conversion of title to the service or its agent, following the submission to the Division of vehicle information and the appropriate fee, shall be allowed to operate up to fifteen (15) days pending inspection by the department.
  - (c) Each provider shall assure compliance with all rules applicable to the operation of the vehicle as follows:
    - 1. The replacement vehicle shall comply with all design, construction, equipment and safety standards as promulgated under paragraphs (1) (2) and (3).
    - 2. Insurance coverage obtained by rider or policy revision shall be in evidence pursuant to rule 1200-12-01-.07.
    - 3. The provider must immediately notify the Division of Emergency Medical Services in writing when the unit is placed in service, submitting information to include:
      - (i) the license and vehicle identification numbers of the substitute or replacement vehicle, and
      - (ii) the permit number of the unit for which the replacement is substituted.
    - 4. Non-standard radio equipment may be authorized for temporary use in vehicles provided such authorization is requested in writing before placing the vehicle is placed in service. The request should include a reasonable, projected time period over which the non-standard equipment is expected to be used, and the basic capabilities of such equipment.
  - (d) Vehicles added to an existing fleet, requiring evidence of additional supplies and equipment to extend service, shall not be operated under temporary authorizations, but may be operated under a letter of approval filed by the Division's authorized representative following payment of fees to the Division's principal office, and evidence of satisfactory inspection by the authorized representative, pending the issuance of a permit.
  - (e) A letter of approval from a Division representative shall not be substituted for a vehicle permit for any period exceeding ninety (90) days.
- (6) Upon inspection, any vehicle deemed unacceptable and failing an inspection shall be immediately removed from service until approved for return to service by the Division's authorized representative.

(Rule 1200-12-01-.03, continued)

**Authority:** T.C.A. §§ 68-140-504, 68-140-506, 68-140-507, and 68-140-526. **Administrative History:** Original rule filed March 20, 1974; effective April 19, 1974. Amendment filed February 8, 1983; effective May 16, 1983. Amendment filed November 30, 1984; effective February 12, 1985. Amendment filed April 8, 1987; effective May 23, 1987. Amendment filed May 27, 1988; effective July 11, 1988. Amendment filed March 7, 1989; effective April 21, 1989. Amendment filed November 27, 1990; effective January 11, 1991. Amendment filed August 11, 1993; effective October 25, 1993. Amendment filed June 1, 2007; effective August 15, 2007. Amendment 1200-12-01-.02(1)(o) filed August 7, 2009; withdrawn November 2, 2009. Amendment filed August 7, 2009; effective November 5, 2009. Amendment filed May 26, 2010; effective August 24, 2010.

**1200-12-01-.03 EMERGENCY MEDICAL SERVICES EQUIPMENT, MEDICATIONS AND SUPPLIES.**

Each provider shall maintain the required equipment, medications and supplies for the level of service to provide appropriate emergency care and, where applicable, patient care during transport, on each permitted vehicle. It is anticipated that changes in equipment, medications and supplies may be necessary from time to time. This rule hereby adopts the Ambulance Equipment, Medications and Supplies Specifications posted on the Division's web page at <http://tn.gov/health/article/ems-about>, or at any successor web address, and incorporates those specifications into this rule as if they were fully set out and stated herein.

- (1) Definitions – as used in this rule, the following terms and abbreviations shall have the following meanings:
  - (a) “Critical” (C) means any equipment, medications or supplies critical for lifesaving patient care and which by its absence would jeopardize patient care.
  - (b) “Non-Critical” (N) means such equipment, medications or supplies provided in sufficient amounts for patient care, but when missing may not result in serious harm to a patient.
  - (c) “Optional” (O) means any equipment, medications or supplies of elective use, which shall be operational and sanitary.
  - (d) “Specifications” refers to the federal standards and performance requirements for equipment, medications and supplies recognized within the emergency medical services industry and adopted by the board. The current “Ambulance Equipment, Medications and Supplies Specifications” can be found at <http://tn.gov/health/article/ems-about>.
- (2) A written or electronic copy of protocols must be available for inspection on each ambulance.
- (3) Safety equipment is required on each ambulance in accordance with the Ambulance Equipment, Medications and Supplies Specifications.
- (4) Oxygen, inhalation, ventilation, and airway management devices are required on each ambulance in accordance with the Ambulance Equipment, Medications and Supplies Specifications.
- (5) Diagnostic and assessment devices are required on each ambulance in accordance with the Ambulance Equipment, Medications and Supplies Specifications.
- (6) Bandages and dressing material are required on each ambulance in accordance with the Ambulance Equipment, Medications and Supplies Specifications.
- (7) Immobilization devices are required on each ambulance in accordance with the Ambulance Equipment, Medications and Supplies Specifications.

(Rule 1200-12-01-.12, continued)

1. Currently licensed as a Tennessee EMT-Basic or Paramedic without history of revocation, denial, or suspension of licensure and nominated by a sponsoring EMS Agency.
  2. Must be certified as a Cardiopulmonary Resuscitation Instructor.
  3. Pre-Hospital Experience: Minimum of one year practicing in the pre-hospital environment in Tennessee.
  4. Letter of recommendation from sponsoring EMS agency.
- (b) Authorization renewal shall be contingent upon:
1. Maintaining current Tennessee licensure as an Emergency Medical Technician-Basic or Paramedic without disciplinary action.
  2. Maintaining current CPR instructor endorsement.
  3. A letter of recommendation for reauthorization from the sponsoring EMS Agency.
  4. A letter of recommendation for reauthorization from the Regional EMS Consultant.
  5. Completion of an EMS Board approved Instructor Course.
  6. Attendance at an annual First Responder Instructor Update as mandated by the Division of Emergency Medical Services.
- (7) Individuals with a Program Director and/or Instructor Coordinator endorsement are authorized to coordinate and instruct in classes at or below their level of authorization, but not above their level of authorization.

**Authority:** T.C.A. §§ 4-5-202, 4-5-204, 68-39-504, 68-39-505, 68-39-504, 68-39-508, 68-140-504, 68-140-505, 68-140-508, 68-140-509, and 68-140-518. **Administrative History:** Original rule filed November 30, 1984; effective February 12, 1985. Amendment filed April 8, 1987; effective May 23, 1987. Repeal and new rule filed January 4, 2005; effective March 20, 2005. Amendment filed September 21, 2007; effective December 5, 2007. Amendment filed April 6, 2010; effective July 5, 2010.

#### **1200-12-01-.13 EMT, AEMT AND PARAMEDIC EDUCATION PROGRAMS.**

- (1) Definitions. Terms used in this rule shall be defined as follows:
- (a) "Approval" means the approval process the Tennessee Emergency Medical Services Board ("Board") uses to assure that EMT, AEMT, and Paramedic education programs comply with the educational standards, requirements, and policies it adopts.
  - (b) "Approved Program" means an education program approved by the Tennessee Emergency Medical Services Board.
  - (c) "Contract or Agreement" means a written agreement between the school and the cooperating agency.
  - (d) "EMS Educational Institution" means an institution sponsoring an EMT, AEMT, or Paramedic education program shall be an accredited post-secondary educational institution, such as a university, college, community college, technical school, or fire department in accordance with T.C.A. § 68-140-327, or a state agency conducting

(Rule 1200-12-01-.13, continued)

classes for state law enforcement employees at a state law enforcement training academy, with adequate resources and dedication to educational endeavors.

- (e) "Medical Director" means a physician with an unencumbered Tennessee license having experience and current knowledge of emergency care of acutely ill and/or traumatized patients. This individual shall be familiar with base station operation including communication with, and direction of, pre-hospital emergency units. The medical director must have knowledge of administrative problems affecting EMS personnel education programs and legislative issues regarding educational programs for the pre-hospital provider.
  - (f) "National Accreditation" means accreditation from the Commission on Accreditation of Allied Health Education Programs ("CAAHEP").
  - (g) "National Education Standards" shall mean national education standards developed from the National EMS Scope of Practice Model for Emergency Medical Service Personnel as promulgated by the U.S. Department of Transportation, National Highway Traffic Safety Administration.
- (2) EMS Educational Programs:
- (a) Any EMS Educational Institution sponsoring an EMT, AEMT, or Paramedic education program to qualify applicants for licensure shall ensure that its program conforms, at a minimum, to the national education standards developed from the National EMS Scope of Practice Model for Emergency Medical Service Personnel promulgated by the U.S. Department of Transportation, National Highway Traffic Safety Administration, which the EMS Board has approved, and to such rules as the Board shall promulgate.
  - (b) Any EMS Educational Institution sponsoring an EMT, AEMT, or Paramedic education program shall adopt, at a minimum, all parts of the curricula as developed from the national education standards including skills, training requirements, and permitted practices and procedures for appropriate licensure classification which the EMS Board has adopted.
  - (c) The EMS Educational Institutions sponsoring EMS training programs shall:
    1. File a written request for Division approval with the EMS Division at least thirty (30) days prior to the start date of classes;
    2. Ensure that the training program has sufficient supervised practice, equipment, and experience for each required clinical skill;
    3. Have a medical director whose affiliation is confirmed in writing;
    4. File a description of curriculum with the EMS Division; and
    5. Meet the instructor/student ratio approved by the Board.
  - (d) Only students from Tennessee approved programs or those who have met reciprocity requirements shall be eligible for state licensure.
  - (e) Purposes of Approval are as follows:
    1. To set standards for education programs to prepare emergency medical services licensees to practice safely; and

(Rule 1200-12-01-.13, continued)

2. To ensure that graduates of an approved EMS Educational Institution are eligible for admission to the licensure examinations.
- (f) Approval shall be categorized, and awarded or revoked in accordance with the following criteria:
1. The Board may grant initial approval to a new program that has not been in operation long enough to graduate its first class, but demonstrates its eligibility for full approval. The Board shall review programs for full approval one year after initial approval or when their first class of students graduates.
  2. Approval and renewal of approval shall be based on recommendations of the Division made to the Board based upon application information, survey and site visits, review of clinical experiences and documentation, instructor/ student ratio, instructor qualifications, and related evidence of continuing compliance with the regulations of the Board.
  3. The Board may grant approval for a period of five (5) years to a program that has met the requirements that are set forth by the Board and the policies of the Division of EMS.
  4. The Board may grant conditional approval to a program which has failed to maintain the standards and has been notified that it must meet the requirements within a specified time period or upon demonstration of compliance.
  5. The Board shall deny approval for cause, or it may revoke or condition approval for failure to comply with the standards the Board establishes.
  6. If the institution does not correct deficiencies within the specified time, and until the Board approves such action, the education program shall not convene a subsequent class.
  7. Programs desiring to cease education activities shall notify the Director of EMS in writing.
- (g) All programs must maintain for first attempt for licensure, an annual pass rate as approved by the Board. Should a program fail to maintain the required pass rate it shall:
1. Receive a "Letter of Concern" from the Division.
  2. Should a program fail to achieve the required pass rate for a second year, the program shall receive a "Letter of Warning" from the Division and be required to submit a "Plan of Correction" to the Division outlining its recommendations for improvement.
  3. Should a program fail to achieve the required pass rate for a third year, a representative from the approved program shall be required to appear before the Board to explain the "Plan of Correction" and the steps taken to improve.
  4. The Board may, in accordance with the Uniform Administrative Procedures Act (UAPA), condition, suspend, or revoke the educational institution's approval.
- (h) Requirements for Approval.
1. Sponsorship/Affiliation

(Rule 1200-12-01-.13, continued)

- (i) EMS Educational Institutions must have affiliation agreements with Tennessee licensed Emergency Medical Services, and with Tennessee licensed medical facilities or hospitals which are capable of supporting EMT, AEMT and/or Paramedic education with sufficient supervised practice and experience for the number of students enrolled in the program.
  - (ii) The EMS educational institution must provide the financial support, facilities, and leadership capable of ensuring a sound educational program and appropriate services to faculty and students.
  - (iii) The EMS educational institution shall maintain records of overall student competency in knowledge, skills and experience while maintaining the capability to endorse participants for the license examination.
  - (iv) The EMS educational institution shall notify the Division of any proposed major curriculum or program change in writing which will be subject to Board approval.
2. Curriculum
- (i) Program Goals and Objectives
    - (I) The program shall have a written statement of program goals and objectives consistent with and responsive to the demonstrated needs and expectations of the various communities it serves.
    - (II) Statements of goals and objectives shall provide the basis for program planning, implementation, and evaluation.
    - (III) An advisory committee shall be designated and charged with assisting the program and sponsoring institutional personnel in formulating appropriate goals and standards, monitoring needs and expectations, and ensuring program responsiveness to change.
  - (ii) Minimum Expectations
    - (I) Program goals and objectives must include, but need not be limited to, providing assurance that graduates demonstrate entry-level competencies, as periodically defined by nationally accepted educational standards and scope of practice for the appropriate level of licensure.
    - (II) The curriculum shall follow planned outlines, that shall be kept on file for Division review, that appropriately integrate lecture, laboratory, clinical, and field experience sequenced to assure efficient learning and opportunity for every student. Content and support courses shall include basic theoretical and scientific knowledge reflective of state of the art patient care.
    - (III) The curriculum shall meet, or exceed, the national educational standards and competencies for the appropriate level of licensure as adopted in the United States Department of Transportation National EMS Scope of Practice Model and Education Standards.

(Rule 1200-12-01-.13, continued)

3. Administration and Faculty

(i) Administration of EMS Educational Programs

(I) EMS Educational Institutions offering paramedic educational programs shall include the following:

- I. A full time Division authorized EMS Program Director, whose primary responsibility and fulltime commitment is to the educational program.
- II. The Program Director shall have appropriate training and experience to fulfill the role of program director as indicated in rule 1200-12-01-.12(1).
- III. The Program Director shall be responsible for the organization, administration, periodic review, development and effectiveness of the paramedic educational program.
- IV. The Program Director shall act as a liaison between faculty, the sponsoring service, students, the local medical community, and the Division of Emergency Medical Services.
- V. The Program Director is responsible for recruitment and the continued development of faculty to meet the needs of the institution.

(II) EMS Educational Institutions offering AEMT education shall include the following;

- I. At a minimum, a Division authorized AEMT Instructor/Coordinator, who is responsible for the organization, administration, periodic review, development and effectiveness of the AEMT educational program.
- II. An EMS Program Director in EMS institutions authorized to provide Paramedic educational programs may also administer AEMT educational programs.

(III) EMS Educational Institutions offering EMT education shall include the following:

- I. At a minimum, a Division authorized EMT Instructor/Coordinator, who is responsible for the organization, administration, periodic review, development and effectiveness of the EMT educational program.
- II. An EMS Program Director in EMS institutions authorized to provide Paramedic or AEMT educational programs may also administer EMT educational programs.

(IV) Medical Director. The program shall appoint a medical director who shall be responsible for reviewing and approving the educational content of the program's curriculum. The medical director shall:

(Rule 1200-12-01-.13, continued)

- I. Review and approve the content and quality of the medical instruction and supervision the EMS educational program delivers;
  - II. Ensure that each student is appropriately assessed to assure that the student is making adequate progress toward the completion of the educational program; and
  - III. Attest that each student has achieved the desired level of competence prior to graduation.
- (V) Instructional Faculty
- I. The faculty shall be authorized by the Division and qualified through academic preparation, training, and experience to teach the courses or topics to which they are assigned in the curriculum.
  - II. Faculty members shall demonstrate individual proficiency and qualifications by submitting a personal Curriculum Vitae that will be kept on file with the Program Director.
  - III. The number of faculty instructors shall be sufficient to provide instruction and supervision for each period of the program or field experience.
- (VI) An Authorized Paramedic Instructor/Coordinator shall be responsible for the delivery of instruction in a Paramedic education program.
- I. The Paramedic Instructor/Coordinator shall be knowledgeable in all aspects of pre-hospital care, capable of applying techniques and modalities of adult education, and of managing resources and resource personnel.
  - II. Paramedic Instructor Assistants shall be responsible for teaching practical skills to include: assisting the Program Director and/or Instructor/Coordinator in the delivery of instruction, evaluating student performance of skills under supervision of Program Director or Authorized Paramedic Instructor/Coordinator.
- (VII) An authorized AEMT Instructor/Coordinator shall be responsible for the delivery of instruction in an AEMT educational program.
- I. An authorized AEMT Instructor/Coordinator shall be in the classroom for, at least but not limited to, the following:
    - A. Delivery of didactic material;
    - B. Demonstration of the psychomotor skills;
    - C. Verification of skill proficiency; and
    - D. Supervision of AEMT Instructor Assistants.

(Rule 1200-12-01-.13, continued)

- II. The education program may utilize Authorized AEMT Instructor Assistants for teaching practical skills including, but not limited to, assisting the Program Director and/or AEMT Instructor/Coordinator in the delivery of instruction and evaluating student performance of skills during a lab.
- (VIII) An authorized EMT Instructor/Coordinator shall be responsible for the delivery of instruction in an EMT educational program.
- I. An authorized EMT Instructor/Coordinator shall be in the classroom for, at least but not limited to, the following:
    - A. Delivery of didactic material;
    - B. Demonstration of the psychomotor skills;
    - C. Verification of skill proficiency; and
    - D. Supervision of EMT Instructor Assistants.
  - II. The education program may utilize Authorized EMT Instructor Assistants for teaching practical skills including, but not limited to, assisting the Program Director and/or EMT Instructor/Coordinator in the delivery of instruction and evaluating student performance of skills during a lab.
4. Resources.
- (i) Finances. Financial resources adequate for the continued operation of the educational program shall be provided for each class of students enrolled.
  - (ii) Facilities.
    - (I) Instructional resources shall include:
      - I. Classrooms, laboratories and administrative offices with sufficient space to accommodate the number of students matriculating in the program and the supporting faculty;
      - II. Library resources, related to the curriculum, shall be readily accessible to students and shall include current EMS and medical periodicals, scientific books, audiovisual and self-instructional resources, and other references; and
      - III. Available sufficient supplies and equipment to be used in the provision of instruction that are consistent with the needs of the curriculum and adequate for the students enrolled.
    - (II) Clinical Resources
      - I. The educational program shall establish clinical affiliations that are confirmed by written affiliation agreements with the institutions and agencies that provide students with clinical experience under appropriate medical direction and clinical supervision.

(Rule 1200-12-01-.13, continued)

- II. Students shall have access to an adequate number of patients and in distribution by sex and age who present common problems encountered in the delivery of basic and advanced emergency care.
- III. Students shall be assigned in clinical settings where experiences are educationally sufficient to achieve the national educational standards for the appropriate level of licensure.
- IV. Program instructors or hospital personnel, such as nurses or physicians, who have been approved by the program to so function, shall provide supervision in the clinical setting. The ratio of students to instructors in the clinical facilities shall be adequate to assure effective learning.
- V. Students shall be clearly identified by name plate, uniform, or other apparent means to distinguish them from graduate emergency medical services personnel, other health professionals, workers, and other students.

(III) Field Internship

- I. The program's field internship shall occur within an emergency medical system which demonstrates medical accountability. The student must be under direct supervision of preceptors the program and/or EMS services designate. Preceptors shall be physicians and/or nurses with pre-hospital experience, AEMTs or paramedics. The program shall assure that there is appropriate, objective evaluation of student progress in acquiring the desired competencies in accordance with the national education standards.
- II. Field internship shall occur on an Advanced Life Support vehicle within an EMS system having capability of voice telecommunications with on-line medical direction. The vehicle shall be equipped with equipment and drugs necessary for basic and advanced life support.
- III. The majority of the field internship experience shall occur following the completion of the didactic and clinical phases of the program. It must be structured to assure that upon completion of this portion of the program, each student will achieve the desired competencies of the national educational standards.
- IV. Adequate manpower shall be available within the EMS system to assure that the assigned student is never a substitute for paid personnel or a required team member.

~~5. Students Admission and Conduct.~~

- ~~(i) Selection and admission practices for entrance into an EMT, AEMT, or Paramedic education program shall be based on the following criteria and shall be clearly defined and published by the institution and shall be non-discriminatory with respect to race, color, creed, sex, age, handicaps, or national origin.~~

(Rule 1200-12-01-.13, continued)

- (I) ~~Meet the admission requirements of the EMS educational institution.~~
- (II) ~~Possess an academic or equivalent high school diploma or general education equivalent (GED).~~

5. Student Admissions and Conduct.

- (i) EMS Educational Institution admission requirements shall be clearly defined and published by the institution, and shall be non-discriminatory with respect to race, color, creed, sex, age, handicaps, or national origin.
- (ii) Persons seeking admission to an EMT, AEMT, or Paramedic education program shall:
  - (I) Meet the admission requirements of the EMS educational institution;
  - (II) Possess an academic or equivalent high school diploma or general education equivalent (GED); or
  - (III) Be a high school senior who is eligible for dual enrollment for college credit, and who will be eighteen (18) years of age within ninety (90) days of completing the training for which admission to a program is sought
- (iii)(ii) Upon selection for admission into the EMT, AEMT, or Paramedic program, the student shall:
  - (I) Show good physical and mental health and possess no physical handicaps or disabilities which would impede the ability to fulfill the functions and responsibilities of an EMT, AEMT, or Paramedic.
  - (II) Submit a physical examination form indicating physical health sufficient to perform the duties of an EMT, AEMT, or Paramedic completed by a physician, physician assistant, or nurse practitioner, who has examined the individual. If there are any limitations in the individual's ability to perform adequately, additional documentation shall be submitted from the appropriate professional evaluator which indicates the applicant's abilities to perform adequately (i.e.):
    - I. Speech impairment - Speech Pathologist;
    - II. Hearing impairment - Audiologist;
    - III. Physical handicap or disability - Orthopedist or Registered Physical Therapist; or
    - IV. Vision – Ophthalmologist.
  - (III) Readmission or transfer of students shall be made in accordance with clearly defined and published practices of the institution which shall be non-discriminatory with respect to race, color, creed, sex, age, handicaps, or national origin.

(Rule 1200-12-01-.13, continued)

- (IV) Dismissal. Students shall be subject to dismissal from the education program for cause.

6. Program Records

- (i) Each student record shall include the following:
  - (I) A transcript of high school graduation or graduate equivalent (GED), or official academic college transcript in each student's file;
  - (II) Medical evidence that the protection of students and the public from injury or the transmission of communicable diseases is assured for each student;
  - (III) A record of class and practice participation along with evidence of competencies attained throughout the education program;
  - (IV) Copies of examinations and assessments of the student's development and attainment of competencies;
  - (V) Sufficient information to document each student's satisfactory completion of all didactic, practical skills, laboratory, clinical, and field requirements.
  - (VI) Copies of proof of malpractice insurance on each student enrolled in the program with minimal coverage of \$1,000,000.00/\$3,000,000.00 which will extend for the entire duration of the education program; and
  - (VII) The records maintained by the institution shall be complete whether or not a student is successful in completing the prescribed course of instruction.
- (ii) Each academic record shall include:
  - (I) A descriptive synopsis of the current curriculum; and
  - (II) A statement of course objectives, copies of course outlines, class and laboratory schedules, clinical and field internship experience schedules, and teaching plans.

7. Student Admission. In addition to requirements for admission to all EMT education programs, applicants for admission to AEMT Education programs shall meet requirements as follows:

- (i) Hold a current Tennessee EMT license prior to admission; or
- (ii) Have successfully completed the EMT education program within 120 days of beginning an Advanced EMT education program and have successfully completed a Board approved EMT competency written and practical examination.

(3) Paramedic Education Programs.

- (a) Upon initial approval of a paramedic program by the EMS Board, all paramedic education programs must make application to the Committee on Accreditation of

(Rule 1200-12-01-.13, continued)

Educational Programs for the Emergency Medical Services Professions (CoAEMSP) and receive a letter of review for accreditation with the Commission of Accreditation of Allied Health Education Programs (CAAHEP) and shall be accredited within four (4) years of Initial application of CAAHEP.

- (b) All Paramedic programs must maintain accreditation with CAAHEP.
- (c) Additional admission requirements for paramedic education programs.
  1. To be eligible for admission an applicant shall be currently licensed as an Advanced Emergency Medical Technician in the State of Tennessee.
  2. The applicant must be evaluated using a scale where each requirement will receive a score of 0-5 depending on the quality of achievement with 5 being the highest and 0 being the lowest. Applicants selected shall receive an overall interview rating of 2.5 and above.
  3. AEMT knowledge. The applicant having successfully completed an AEMT license exam more than one year prior to the start of Paramedic classes must successfully complete an AEMT assessment written examination approved by the Board.
  4. An applicant shall be interviewed and evaluated. Each area evaluated in the interview shall be rated with a score of 0-5 depending on the quality of achievement, with 5 being the highest score and 0 being the lowest. Applicants selected shall receive an overall rating of 2.5 and above.
    - (i) The applicant shall be interviewed by a committee of at least four (4) individuals and a representative from the Division of Emergency Medical Services. Committee members shall be selected from the following: an EMS educator, a registered nurse, a physician, a paramedic, and/or an ambulance service director.
    - (ii) The following criteria shall be used for interview evaluation:
      - (I) EMS related experience;
      - (II) Level of maturity and motivation;
      - (III) Level of knowledge;
      - (IV) Communication ability; and
      - (V) Poise.

**Authority:** T.C.A. §§ 4-5-202, 4-5-204, 68-140-304, 68-140-504, 68-140-506, 68-140-508, and 68-140-509. **Administrative History:** Original rule filed November 30, 1985; effective February 12, 1985. Amendment filed October 22, 1987; effective December 6, 1987. Amendment filed January 17, 1989; effective March 3, 1989. Amendment filed September 24, 1990; effective November 8, 1990. Amendment filed October 22, 1993; effective January 5, 1994. Amendment filed August 5, 1996; effective October 19, 1996. Repeal and new rule filed January 11, 2013; effective April 11, 2013.

~~1200-12-01-.14 CATEGORIES FOR EMERGENCY MEDICAL SERVICES AND/OR AMBULANCE SERVICE AND MOBILE PRE-HOSPITAL EMERGENCY CARE. The following rules are promulgated to establish minimum standards and categorical capabilities for emergency medical services and/or~~

~~ambulance services licensed in Tennessee and to govern emergency medical services provided to a patient.~~

~~(1) Definitions.~~

- ~~(a) "Advanced Life Support" means advanced emergency medical technicians, or other EMS personnel having a higher level of licensure, who treat life-threatening or aggravating medical emergencies under medical control.~~
- ~~(b) "Basic Life Support" means EMS personnel, authorized through the appropriate level of licensure, who treat life-threatening medical emergencies under medical control.~~
- ~~(c) "Base of Operations" means the principal location and physical structure (i.e. building), having a street address, city and zip code, from which ambulances and/or personnel operate to provide ambulance service within a service area.~~
- ~~(d) "Emergency Medical Condition" means a medical condition manifesting itself by acute symptoms of sufficient severity, including severe pain, such that it could put the patient's health in serious jeopardy, cause serious impairment to bodily function, or cause serious dysfunction of any body organ, system or part without immediate medical attention.~~
- ~~(e) "Emergency Run" means a transport or response, occurring or accomplished without delay, to the perceived need for care for an emergent, trauma or medical condition in order to prevent loss of life or aggravation of illness or injury, including but not limited to the following:~~
- ~~1. Cardiac arrest;~~
  - ~~2. Difficulty breathing/shortness of breath/airway impairment;~~
  - ~~3. Severe chest pain or heart attack;~~
  - ~~4. Severe motor vehicle crashes/entrapment or pin-in;~~
  - ~~5. Decreases in level of consciousness/diabetic emergencies;~~
  - ~~6. Heat emergencies;~~
  - ~~7. Severe lacerations or possible amputations; severe burns (thermal, chemical or electrical);~~
  - ~~8. Possible stroke; and~~
  - ~~9. Complications of childbirth.~~
- ~~(f) "Emergency Medical Service Director" ("Service Director") means an individual who directs the planning, development, implementation, coordination, administration, monitoring and evaluation of services provided by a licensed ambulance service.~~
- ~~(g) "Emergency Medical Service Medical Director" ("Medical Director") means an individual who has an active, unencumbered license to engage in the practice of medicine pursuant to title 63, chapter 6, or chapter 9, and who provides medical advice, direction, oversight, quality assurance and authorization to emergency medical services personnel at a licensed ambulance service, and/or emergency medical services educational institution.~~

## (Rule 1200-12-01-.14, continued)

- (h) ~~"Medical Control" means the instruction, advice or orders given by a physician in accordance with locally or regionally approved practices.~~
  - (i) ~~"Minimum Standards" means the minimum requirements for ambulance and emergency medical services established by law, regulation, and prevailing standards of care.~~
  - (j) ~~"Primary Service" means the EMS service within a specific area that has contracted with or been recognized by the local government to provide an initial response to scene emergencies.~~
  - (k) ~~"Service Area" means the political and geographical area with a population that can be expected to use the services offered by a specific provider.~~
  - (l) ~~"Specialty Care Transport" ("SCT") means the inter-facility transportation of a critically injured or ill patient by a ground ambulance vehicle, including the provision of medically necessary supplies and services, which requires a level of service beyond the scope of a paramedic.~~
  - (m) ~~"Substation" means the physical structure from which ambulances and personnel operate on a day-to-day basis to provide ambulance services, which are supplementary to the services provided from the base of operations for the specified city or county.~~
  - (n) ~~"Volunteer ambulance service" means a not-for-profit service that uses volunteer personnel and restricts emergency operations to scheduled events or serves as a relief organization under the constraint of the main or governmental emergency medical services provider within a service area.~~
- (2) ~~Ambulance Operations.~~
- (a) ~~Each base of operations must hold a State-issued service license for the county in which it is located.~~
  - (b) ~~No ambulance service shall position, post, stage or otherwise offer or make an ambulance available within the service area where the county, municipality or special purpose district or authority has current ordinances or resolutions preventing such without prior authorization of the governing body of the service area.~~
  - (c) ~~Nothing shall preclude an ambulance provider with federal contracts from providing service as required under those contracts.~~
- (3) ~~Classification of Services.~~
- (a) ~~Each ambulance service license the Division issues must indicate the minimum clinical level of service that the ambulance service can provide.~~
    1. ~~The Division shall grant an ambulance service license only after it verifies that the service is in compliance with Division rules for immediate or scheduled patient transport.~~
    2. ~~The license shall designate the level of service the agency provides.~~
      - (i) ~~Based on the result of the application and the applicant's compliance with the Division's rules and regulations throughout the inspection process, the~~

(Rule 1200-12-01-.14, continued)

~~EMS Division shall designate agencies that function at or above the Basic Life Support (BLS) service as a BLS service.~~

- ~~(ii) Based on the result of the application and the applicant's compliance with the Division's rules and regulations throughout the inspection process, the EMS Division shall designate agencies that function at or above the Advanced Life Support (ALS) service level as an ALS service.~~

~~(b) The Division shall recognize the following classes of service for licensing or authorization of ambulance and/or emergency medical services:~~

- ~~1. Primary emergency provider. Each ambulance service the local government designates as the primary provider by recognizing it as such or contracting with it to provide initial response to scene emergencies shall operate advanced and/or basic life support ambulances within the service area. The service may also provide ambulance transport services under its license for its county specific service area. It shall coordinate licensed volunteer ambulance services as well as coordinate and oversee emergency medical response agencies within its jurisdiction.~~
- ~~2. Licensed Ambulance Transport Services. Each licensed ambulance service shall operate ambulances for unscheduled or scheduled transportation of patients. The level of the licensed ambulance service must be consistent with their issued service license level.~~
- ~~3. Volunteer not-for-profit ambulance service using volunteer personnel shall restrict emergency operation to scheduled events or serve as a relief organization under the coordination of the primary emergency provider. Volunteer ambulance services may, in times of disaster, be utilized in their communities as deemed necessary by local authorities and/or primary service providers.~~

~~(c) Conditional Ambulance Services. The Division may place a new service or a service having deficiencies in a conditional license category for up to ninety (90) days from the date of the deficiency or issuance of the license.~~

~~(4) Personnel. Each ambulance or emergency medical service shall assign qualified persons to perform functions to ensure compliance with its licensure as follows:~~

~~(a) Medical Director. Each ambulance service shall retain a medical director who serves as medical authority for the ambulance service and functions as a liaison to the medical community, medical facilities, and governmental entities. His or her duties shall include, but not be limited to, the following:~~

~~1. Quality management and improvement of patient care, including the following:~~

~~(i) Development of protocols, standing orders, training, procedures, approval of medications and techniques permitted for field use by service personnel in accordance with regulations of the Division;~~

~~(ii) Quality management and improvement of field performance as may be achieved by direct observation, field instructions, in-service training or other means including, but not limited to:~~

~~(I) Ambulance run report review;~~

~~(II) Review of field communications tapes;~~



(Rule 1200-12-01-.14, continued)

- (ii) ~~— A course outline;~~
- 3. ~~— Course evaluations by students;~~
- 4. ~~— An evaluation of each student's performance in the course; and~~
- 5. ~~— A sign-in sheet bearing the signatures of all students who attended the course.~~
- (d) ~~— The service's training records will be randomly audited annually for compliance.~~
- (8) ~~— The Division shall issue each service permits identifying the county in which ambulances or response units are based. The service owner may maintain records for such operations at a central location. The service owner shall maintain records to detail all activities at the county base of operations.~~
- (9) ~~— Licensing Procedures~~
  - (a) ~~— No person, partnership, association, corporation, or state, county or local government unit, or division, department, board or agency thereof, shall establish, conduct, operate, or maintain in the state of Tennessee any ambulance, invalid vehicle service or vehicle operated with a patient cot for transfer of persons without having a license.~~
    - 1. ~~— A license shall only be issued to the applicant named and only for the base of operations and substations listed in the application for licensure.~~
    - 2. ~~— Licenses are not transferable or assignable and shall expire annually on June 30.~~
    - 3. ~~— The license shall be conspicuously posted at the base of operations.~~
  - (b) ~~— Initial Licensure~~
    - 1. ~~— In order to make application for a new license, applications shall have service names that are unique and the business name shall be registered with the Department of State, Division of Business Services.~~
    - 2. ~~— The applicant shall submit an application on a form prepared by the department. The service shall report the names, titles and summary of responsibilities of the service director and those persons who will be supervising the ambulance service as officers, directors or other ambulance service officials, and information as to any misdemeanor or felony convictions, or disciplinary sanctions against licenses, certifications, or other authorizations to practice a health care occupation or profession, that have been imposed against them in this or any other state.~~
    - 3. ~~— Each applicant for a license shall pay the annual license fee and permit fees based on the number of ambulances or permitted invalid vehicles. The fees must be submitted with the application and are non-refundable.~~
    - 4. ~~— The issuance of an application form is in no way a guarantee that the completed application will be accepted or that a license will be issued by the Division. Patients shall not be transported until a license has been issued. Applicants shall not hold themselves out to the public as being an ambulance service until the license has been issued. A license shall not be issued until the service is in substantial compliance with these rules and regulations, including submission of all information required by T.C.A. § 68-140-306, or as later amended, and of all information required by the Division.~~

(Rule 1200-12-01-.14, continued)

5. ~~The applicant shall not use subterfuge or other evasive means to obtain a license, such as filing for a license through a second party when an individual has been denied a license, had a license disciplined, or has attempted to avoid the inspection and review process in this or any other state.~~
6. ~~An applicant shall allow the premises, the service, and its vehicles to be inspected by a representative of the Division.~~
7. ~~In the event that deficiencies are noted, the applicant shall submit a plan of corrective action to the Division. Once the deficiencies have been corrected, then the Division shall reconsider the application for licensure. If vehicles have failed inspection, a repeat inspection fee must be submitted to the Division.~~

(c) ~~License Renewal~~

1. ~~In order to renew a license, each service shall subject its premises, operational procedures, records, equipment, personnel and vehicles to periodic inspections by representatives of the Division for compliance with these rules. If deficiencies are noted, the licensee shall submit an acceptable plan of corrective action, remedy the deficiencies and pay any applicable repeat inspection fees. In addition, each licensee shall submit a renewal form approved by the Division and any applicable renewal fees prior to the expiration date of the license.~~
2. ~~Upon reapplication, the licensee shall submit its base of operations, stations, and vehicles to inspections by representatives of the department for compliance with these rules.~~
3. ~~EMS services must show documented proof of annual mandatory random drug screening for employees.~~
4. ~~An ambulance service may renew the service license within sixty (60) days following the license expiration date upon payment of the renewal fee, in addition to a late penalty established by the board for each month or fraction of a month that payment for renewal is late, provided that the late penalty shall not exceed twice the renewal fee. If the ambulance service license is not renewed within sixty (60) days following the license expiration date, then the licensee shall reapply for licensure in accordance with the rules established by the board.~~

(d) ~~Changes of address, insurance agents or policies, service director, officers, or other service officials, EMS medical director, or bankruptcy filings must be reported to the Division no later than five (5) business days after the change or date of effective action.~~

(e) ~~A proposed change of ownership, including a change in a controlling interest, must be reported to the Division a minimum of thirty (30) days prior to the change. The Division must receive a new application and fee before the license may be issued.~~

1200-12-01-.14 Emergency Medical Services Standards and Categories for Licensed Ambulance Service and Mobile Prehospital Emergency Care. The following rules are promulgated to establish minimum standards and categorical capabilities for emergency medical services and/or ambulance services licensed in Tennessee and to govern emergency medical services provided to a patient.

(1) Definitions.

- (a) "Advanced Life Support" means advanced emergency medical technicians, or other EMS personnel having a higher level of licensure, who treat life-threatening or aggravating medical emergencies under medical control.

(Rule 1200-12-01-.14, continued)

- (b) "Basic Life Support" means EMS personnel, authorized through the appropriate level of licensure, who treat life-threatening medical emergencies under medical control.
- (c) "Base of Operations" means the principal location and physical structure (i.e. building), having a street address, city and zip code, from which ambulances and/or personnel operate to provide ambulance service within a service area.
- (d) "Division" means the Division of Emergency Medical Services of the Tennessee Department of Health
- (e) "Emergency Medical Condition" means a medical condition manifesting itself by acute symptoms of sufficient severity, including severe pain, such that it could put the patient's health in serious jeopardy, cause serious impairment to bodily function, or cause serious dysfunction of any body organ, system or part without immediate medical attention.
- (f) "Emergency Run" means a transport or response, occurring or accomplished without delay, to the perceived need for care for an emergent, trauma or medical condition in order to prevent loss of life or aggravation of illness or injury, including but not limited to the following:
1. Cardiac arrest;
  2. Difficulty breathing/shortness of breath/airway impairment;
  3. Severe chest pain or heart attack;
  4. Severe motor vehicle crashes/entrapment or pin-in;
  5. Decreases in level of consciousness/diabetic emergencies;
  6. Heat emergencies;
  7. Severe lacerations or possible amputations; severe burns (thermal, chemical or electrical);
  8. Possible stroke; and
  9. Complications of childbirth.
- (g) "Emergency Medical Service Director" ("Service Director") means an individual who directs the planning, development, implementation, coordination, administration, monitoring and evaluation of services provided by a licensed ambulance service.
- (h) "Emergency Medical Service Medical Director" ("Medical Director") means an individual who has an active, unencumbered license to engage in the practice of medicine pursuant to title 63, chapter 6, or chapter 9, and who provides medical advice, direction, oversight, quality assurance and authorization to emergency medical services personnel at a licensed ambulance service, and/or emergency medical services educational institution.
- (i) "Medical Control" means the instruction, advice or orders given by a physician in accordance with locally or regionally approved practices.
- (j) "Minimum Standards" means the minimum requirements for ambulance and emergency medical services established by law, regulation, and prevailing standards of care.

(Rule 1200-12-01-.14, continued)

- (k) "Service Area" means the political and geographical area with a population that can be expected to use the services offered by a specific provider.
- (l) "Specialty Care Transport" ("SCT") means the inter-facility transportation of a critically injured or ill patient by a ground ambulance vehicle, including the provision of medically necessary supplies and services, which requires a level of service beyond the scope of a paramedic.
- (m) "Substation" means the physical structure from which ambulances and personnel operate on a day-to-day basis to provide ambulance services, which are supplementary to the services provided from the base of operations for the specified city or county.
- (n) "Volunteer ambulance service" means a not-for-profit service that uses volunteer personnel and restricts emergency operations to scheduled events or serves as a relief organization under the constraint of the main or governmental emergency medical services provider within a service area.

(2) Ambulance Operations.

- (a) Each base of operations must hold a State-issued service license for the county in which it is located.
- (b) No ambulance service shall position, post, stage or otherwise offer or make an ambulance available within the service area where the county, municipality or special purpose district or authority has current ordinances or resolutions preventing such without prior authorization of the governing body of the service area.
- (c) Notwithstanding any other provision, nothing shall preclude an ambulance provider with federal contracts from providing service as required under those contracts.

(3) Classification of Services.

- (a) Each ambulance service license the Division issues must indicate the minimum clinical level of service that the ambulance service can provide.
- (b) The Division shall grant an ambulance service license only after it verifies that the service is in compliance with Division rules for immediate or scheduled patient transport.
- (c) The Division recognizes the following classes of service for licensing or authorization of ambulances and/or emergency medical services:
  - 1. Category A: Primary emergency provider. Each ambulance service the local government designates as the primary provider by recognizing it as such or contracting with it to provide initial response to scene emergencies shall operate advanced and/or basic life support ambulances within the service area 24 hours a day. The service may also provide ambulance transport services under its license for its county specific service area. It shall coordinate licensed volunteer ambulance services as well as coordinate and oversee emergency medical response agencies within its jurisdiction.
    - (i) Level 1: 100% of Emergency runs shall be made with an Advanced Life Support-equipped ambulance and staffed with a paramedic and a minimum of an EMT.
    - (ii) Level 2: 90% of Emergency runs shall be made with an Advanced Life Support-equipped ambulance and staffed with a paramedic and a

(Rule 1200-12-01-.14, continued)

- minimum of an EMT.
- (iii) Level 3: 100% of Emergency runs shall be made with a Basic Life Support-equipped ambulance and staffed with two AEMTs.
- (iv) Level 4: 90% of Emergency runs shall be made with a Basic Life Support-equipped ambulance and staffed with an AEMT and an EMT.
2. Category B: Licensed Ambulance Transport Services. Each licensed ambulance service shall operate ambulances for unscheduled or scheduled transportation of patients. The level of the licensed ambulance service must be consistent with their issued service license level.
- (i) Level 1: 100% of transports shall be made with an Advanced Life Support-equipped ambulance and staffed with a paramedic and a minimum of an EMT.
- (ii) Level 2: 90% of transports shall be made with an Advanced Life Support-equipped ambulance and staffed with a paramedic and a minimum of an EMT.
- (iii) Level 3: 100% of transports shall be made with a Basic Life Support-equipped ambulance and staffed with two AEMTs 100% of time.
- (iv) Level 4: 90% of transports shall be made with a Basic Life Support-equipped ambulance and staffed with a minimum of two EMTs.
3. Category C: Volunteer not-for-profit ambulance services using volunteer personnel shall restrict emergency operations to scheduled events or serve as a relief organization under the coordination of the primary emergency provider. Volunteer ambulance services may, in times of disaster, be used in their communities as deemed necessary by local authorities and/or primary service providers. All Category C services shall be Category B, Level 4 transport services at a minimum.
- (d) Conditional Ambulance Services. The Division may place a new service or a service having deficiencies in a conditional license category for up to ninety (90) days from the date of the deficiency or issuance of the license. Placing the license in a conditional license category is not disciplinary action.
- (4) Personnel. Each ambulance or emergency medical service shall assign qualified persons to perform functions to ensure compliance with its licensure as follows:
- Each ambulance service shall retain an Emergency Medical Services Medical Director ("Medical Director") who serves as medical authority for the ambulance service and functions as a liaison to the medical community, medical facilities, and governmental entities. His or her duties shall include, but not be limited to, the following:
- (a) Quality management and improvement of patient care, including the following:
1. Development of protocols, standing orders, training, procedures, approval of medications and techniques permitted for field use by service personnel in accordance with regulations of the Division;
2. Quality management and improvement of field performance as may be achieved by direct observation, field instruction, in-service training or other means

(Rule 1200-12-01-.14, continued)

including, but not limited to:

- (i) Ambulance run report review;
- (ii) Review of field communications tapes;
- (iii) Post-run interviews and case conferences;
- (iv) Critiques of simulated or actual patient presentations; and
- (v) Investigation of complaints or incidents reports.

- (b) The medical director shall have disciplinary and/or corrective action authority sufficient to oversee quality management and improvement of patient care as the service director of the ambulance service deems appropriate.
- (5) Each ambulance service shall require and document continuing education of at least fifteen (15) contact hours annually for ninety-five percent (95%) of emergency care personnel. Each service shall implement a competency-based evaluation program in accordance with board policy.
- (6) Each ambulance service shall also conduct training for new procedures or remedial instruction as ordered by the medical director and or emergency medical service director.
- (7) EMS/Ambulance Services who do not use educational institutions or other educational accrediting bodies to provide continuing education contact hour credit for in-service training hours for renewal of personnel licenses may count such in-service training hours as continuing education contact hours as required for renewal of personnel licenses, provided the service meets the following requirements:
- (a) The service must have an individual who maintains, at a minimum, an authorization of an EMT instructor/coordinator authorized by the Division of EMS to maintain educational records and coordinate in-service education for the service's personnel.
  - (b) The service must maintain all educational records for five (5) years.
  - (c) The service's educational records must contain:
    - 1. A curriculum vitae establishing the instructor's expertise in the content for each lesson plan;
    - 2. Lesson plans shall include, but not be limited to:
      - (i) A list of course objectives, and
      - (ii) A course outline;
    - 3. Course evaluations by students;
    - 4. An evaluation of each student's performance in the course; and
    - 5. A sign-in sheet bearing the signatures of all students who attended the course.
  - (d) The service's training records will be randomly audited annually for compliance.
- (8) Service permits issued by the Division shall be specific to the county in which the service has its base of operations. The service owner may maintain records for such operations at a central

(Rule 1200-12-01-.14, continued)

location. The service owner shall maintain records to detail all activities at the county base of operations.

(9) Licensing Procedures

(a) No person, partnership, association, corporation, or state, county or local government unit, or division, department, board or agency thereof, shall establish, conduct, operate, or maintain as a business in the state of Tennessee any ambulance, invalid vehicle service or vehicle operated with a patient cot for transport of persons without having a license.

1. A license shall only be issued to the applicant named and only for the base of operations and substations listed in the application for licensure.
2. Licenses are not transferable or assignable and shall expire annually on June 30.
3. The license shall be conspicuously posted at the base of operations.

(b) Initial Licensure

1. In order to make application for a new license, applicants shall have service names that are unique and the business name shall be registered with the Department of State, Division of Business Services.
2. The applicant shall submit an application on a form prepared by the Division. The service shall report the names, titles and summary of responsibilities of the service director and those persons who will be supervising the ambulance service as officers, directors or other ambulance service officials, and information as to any misdemeanor or felony convictions, or disciplinary sanctions against licenses, certifications, or other authorizations to practice a health care occupation or profession, that have been imposed against them in this or any other state.
3. Each applicant for a license shall pay the annual license fee and permit fees based on the number of ambulances or permitted invalid vehicles. The fees must be submitted with the application and are non-refundable.
4. The issuance of an application form is in no way a guarantee that the completed application will be accepted or that a license will be issued by the Division. Patients shall not be transported until a license has been issued. Applicants shall not hold themselves out to the public as being an ambulance service until the license has been issued. A license shall not be issued until the service is in substantial compliance with these rules and regulations, including submission of all information required by T.C.A. § 68-140-306, or as later amended, and of all information required by the Division.
5. The applicant shall not use subterfuge or other evasive means to obtain a license, such as filing for a license through a second party when an individual has been denied a license, had a license disciplined, or has attempted to avoid the inspection and review process in this or any other state.
6. An applicant shall allow the premises, the service, and its vehicles to be inspected by a representative of the Division.
7. In the event that deficiencies are noted, the applicant shall submit a plan of corrective action to the Division. Once the deficiencies have been corrected, then the Division shall reconsider the application for licensure. If vehicles have failed inspection, a repeat inspection fee must be submitted to the Division.

(Rule 1200-12-01-.14, continued)

(c) License Renewal

1. In order to renew a license, each service shall subject its premises, operational procedures, records, equipment, personnel and vehicles to periodic inspections by representatives of the Division for compliance with these rules. If deficiencies are noted, the licensee shall submit an acceptable plan of corrective action, remedy the deficiencies and pay any repeat inspection fees. In addition, each licensee shall submit a renewal form approved by the Division and any applicable renewal fees prior to the expiration date of the license.
2. Upon reapplication, the licensee shall submit its base of operations, stations, and vehicles to inspections by representatives of the Division for compliance with these rules.
3. Ambulance services must show documented proof of annual mandatory random drug screening for licensed employees.
4. An ambulance service may renew the service license within sixty (60) days following the license expiration date upon payment of the renewal fee, in addition to a late penalty established by the board for each month or fraction of a month that payment for renewal is late, provided that the late penalty shall not exceed twice the renewal fee. If the ambulance service license is not renewed within sixty (60) days following the license expiration date, then the licensee shall reapply for licensure in accordance with the rules established by the board.

(d) Changes of address, insurance agents or policies, service director, officers, or other service officials, EMS medical director, or bankruptcy filings must be reported to the Division no later than five (5) business days after the change or date of effective action.

(e) A proposed change of ownership, including a change in a controlling interest, must be reported to the Division a minimum of thirty (30) days prior to the change. The Division must receive a new application and fee before the license may be issued.

**Authority:** T.C.A. §§ 4-5-202, 4-5-204, 68-140-304, 68-140-306, 68-140-307, 68-140-504, 68-140-506, and 68-140-507. **Administrative History:** Original rule filed November 30, 1984; effective February 12, 1985. Amendment filed March 22, 1985; effective April 21, 1985. Amendment filed June 30, 1987; effective August 14, 1987. Amendment filed September 23, 1991; effective November 7, 1991. Amendment filed October 22, 1993; effective January 5, 1994. Amendment filed March 7, 1994; effective May 21, 1994. Amendment filed January 7, 1997; effective March 23, 1997. Amendment filed May 5, 2014; effective August 3, 2014.

**1200-12-01-.15 AMBULANCE SERVICE RECORDS.** Each ambulance service and invalid vehicle operator, licensed or permitted by the Tennessee Department of Health and Environment shall maintain records that include, but are not limited to, the following information:

- (1) Each ambulance service shall maintain the following records and provide information to the Division office at the request of any authorized representative of the Division relative to ambulance service personnel, including, but not limited to the following:
  - (a) Records indicating the individual's driver's license type and number, emergency medical technician license number, training or expiration date of CPR courses, the date of the individual's last physical examination, and the status of the individual's EMS

\* 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)
Christopher Brooks, M.D.	X				
Jeffrey L. Davis, EMT-P	X				
Kappu Deshpande, MSN, EMT-P				X	
Thomas A. Dunavant, AEMT	X				
Donald Mosby, EMT-P	X				
Greg Patterson, AEMT				X	
Brian Robinson, AEMT	X				
James E. Ross, RN, AEMT	X				
Dennis Rowe, EMT-P	X				
Sullivan K. Smith, M.D.	X				
Timothy Strange, EMT-P	X				
Tyler White, RN	X				
Jeannie Yeatman, RN, EMT	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Emergency Medical Services Board (board/commission/ other authority) on 06/20/2018(mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Christopher Brooks, M.D.	X				
William J. Beaman, EMT-P	X				
Kappu Deshpande, MSN, EMT-P	X				
Thomas A. Dunavant, AEMT	X				
Twila C. Rose, EMT-P	X				
Greg Patterson, AEMT	X				
Brian Robinson, AEMT	X				
James E. Ross, RN, AEMT	X				
Dennis Rowe, EMT-P	X				
Sullivan K. Smith, M.D.	X				
Timothy Strange, EMT-P	X				

Tyler White, RN		X			
Jeannie Yeatman, RN, EMT	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Emergency Medical Services Board (board/commission/ other authority) on 12/12/2018 (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: 04/10/18 (mm/dd/yy)

Rulemaking Hearing(s) Conducted on: (add more dates). 06/20/18 and 12/12/2018 (mm/dd/yy)

Date: 6.21.19

Signature: [Handwritten Signature]

Name of Officer: Paul Richardson

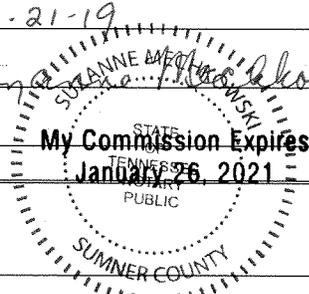
Assistant General Counsel

Title of Officer: Department of Health

Subscribed and sworn to before me on: 6-21-19

Notary Public Signature: [Handwritten Signature]

My commission expires on: My Commission Expires January 26, 2021



Agency/Board/Commission: Emergency Medical Services Board

Rule Chapter Number(s): 1200-12-01

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

9/11/2019

Date

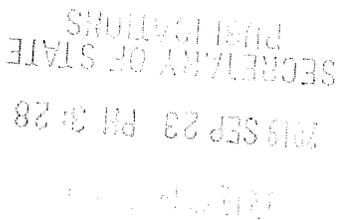
**Department of State Use Only**

Filed with the Department of State on: 9/23/19

Effective on: 12/22/19

[Handwritten Signature]

Tre Hargett  
Secretary of State



## G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Environment and Conservation

DIVISION: Radiological Health

SUBJECT: Use of X-ray Apparatus

STATUTORY AUTHORITY: The rulemaking is pursuant to Tennessee Code Annotated, § 68-202-206, which authorizes the Commissioner to promulgate rules and regulations for implementation. However, the rulemaking is not mandated by federal or state law.

EFFECTIVE DATES: December 9, 2019 through June 30, 2020

FISCAL IMPACT: Minimal

STAFF RULE ABSTRACT: This rulemaking hearing rule and rule amendments: (1) authorize the use of dental and analytical hand-held X-ray equipment, if specified requirements regarding personnel dosimetry monitoring, unauthorized usage, and training are followed; and (2) authorize government law enforcement agencies to use personnel security screening to identify contraband items and weapons that would present a security threat within a secured facility perimeter. Currently, waivers with the conditions contained in the proposed rules are granted to these registrants. The new rule and rule amendments eliminate a regulatory inefficiency by eliminating the need for a waiver.

## Public Hearing Comments

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

**Comment:** One comment was received from a manufacturer of hand-held X-ray devices, in which the commenter agreed with all proposed changes except the personnel monitoring requirements of 0400-20-06-.05(3)(r)1(i) and 0400-20-06-.06(2)(a)1(i). The commenter believed that adhering to these dosimetry requirements would be overly burdensome and potentially cost-prohibitive for registrants, particularly dental practices. The commenter cited two published studies conducted using the commenting manufacturer's devices, which the commenter claimed supported that the average operator whole body dose is well below State occupational regulatory limits.

**Response:** Prior to this regulatory amendment, Tennessee's state regulations for protection against radiation (SRPAR) prohibited hand holding dental X-ray devices and required operating personnel to stand at least two meters from the patient and the tube head (SRPAR 0400-20-06-.05(3)(d) and (f)). In an effort to accommodate hand-held dental technology, the Department is making the rules more flexible to allow an operator to hand hold the X-ray device. Considering the proximity of the operator to the primary beam, the Department believes that personnel monitoring for a limited period of time (one year) provides an assurance that the dose to the operator remains within regulatory limits. It is important to note that the rules are intended to provide for the safe use of all makes and models of hand-held dental devices, not just devices manufactured by the commenter.

## 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.

All dental practices that possess or desire to possess hand-held X-ray devices for diagnostic purposes will be affected by this rule; this includes approximately 300 registrants. All industrial users of open-beam hand-held analytical X-ray fluorescent devices will be affected by this rule; this includes approximately 10 registrants. There is no cost to the aforementioned registered X-ray user community, rather this community will benefit from this rule as it eliminates the need to request exemption from certain existing rules.

- (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.

This rule requires no additional reporting, no additional recordkeeping, and no other administrative costs to remain in compliance with the proposed rule. No additional professional skills are necessary for preparation of reports or records as a result of this rule.

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

These proposed rules will provide a positive effect on impacted businesses in that they will be able to remain in compliance with their hand-held devices without having to apply for exemptions from the existing rules.

- (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 Department is not aware of a less burdensome, less intrusive or less costly alternative method of achieving the objectives of the proposed rule. In fact, these proposed rules will ease the existing burden and thus be less intrusive and less costly means of achieving compliance for those impacted. In addition, these proposed rules will reduce the impact on State resources by eliminating the need for reviewing and issuing exemptions to the existing rules.

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

This rulemaking is comparable to the Part F - MEDICAL DIAGNOSTIC AND INTERVENTIONAL X-RAY AND IMAGING SYSTEMS of the Conference of Radiation Control Program Directors (CRCPD) Suggested State Regulations (SSRs).

- (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 of small businesses from any part of the requirements proposed in these rules would pose a potential health risk to persons using hand-held devices.

## **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 Department anticipates that these amended rules will not have a financial 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 proposed new rule and rule amendments: (1) authorize the use of dental and analytical hand-held X-ray equipment, if specified requirements regarding personnel dosimetry monitoring, unauthorized usage, and training are followed; and (2) authorize government law enforcement agencies to use personnel security screening to identify contraband items and weapons that would present a security threat within a secured facility perimeter. Currently, waivers with the conditions contained in the proposed rules are granted to these registrants. The new rule and rule amendments eliminate a regulatory inefficiency by eliminating the need for a waiver.

- (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;

The rulemaking is pursuant to Tenn. Code Ann. § 68-202-206 authorizing the Commissioner to promulgate rules and regulations for implementation. However, the rulemaking is not mandated by federal or state law.

- (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;

Those most affected by these proposed rules are registrants possessing hand-held X-ray devices, primarily dentists and scrap metal recycling facilities. There is one law enforcement screening device in use currently. Registrants are supportive 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;

The Department is not aware of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the 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 should be no increase in revenue or expenditures resulting from promulgation of these rules. The decrease in state expenditures is expected to be minimal.

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

Andrew Holcomb  
Division of Radiological Health  
Department of Environment and Conservation  
(615) 532-3038  
[Andrew.holcomb@tn.gov](mailto:Andrew.holcomb@tn.gov)

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

Emily Urban  
Deputy General Counsel  
Office of 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 General Counsel  
Tennessee Department of Environment and Conservation  
William R. Snodgrass Tennessee Tower  
312 Rosa L. Parks Avenue, 2nd Floor  
Nashville, Tennessee 37243  
(615) 532-0108  
Emily.Urban@tn.gov

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

Economic Impact Statement [Tenn. Code Ann. § 4-33-104(b)]

- (1) A description of the action proposed, the purpose of the action, the legal authority for the action and the plan for implementing the action.

This rulemaking amends Chapter 0400-20-06 by: (1) defining and authorizing the use of dental and analytical hand-held x-ray equipment if specified requirements regarding personnel dosimetry monitoring, unauthorized usage, and training are followed; and (2) by authorizing government law enforcement agencies to use personnel security screening to identify contraband items and weapons that would present a security threat within a secured facility perimeter. Currently, waivers with the conditions contained in the proposed rules are granted to these registrants. The purpose of these amendments is to eliminate a regulatory inefficiency by eliminating the need for a waiver. The legal authority for this rulemaking is T.C.A. §§ 68-202-101 et seq. and 4-5-201 et seq. Because affected facilities are currently complying with the existing waivers, no additional action is required by the regulated community to implement these changes.

- (2) A determination that the action is the least-cost method for achieving the stated purpose.

The stated purpose of this rulemaking is to eliminate the cost to the registrants to obtain from the Commissioner waivers from certain requirements of State Regulations for Protection Against Radiation (SRPAR). These amendments are the least-cost method for achieving this purpose.

- (3) A comparison of the cost-benefit relation of the action to nonaction.

In the case of nonaction, the registrants will continue to expend resources requesting waivers and the Commissioner will expend resources reviewing and responding to these requests for waivers from SRPAR requirements that cannot be satisfied by hand-held devices. These amendments will eliminate the need to request and process these waivers.

- (4) A determination that the action represents the most efficient allocation of public and private resources.

These rulemaking amendments eliminate an unnecessary waiver process while ensuring adequate public health and safety by defining the parameters under which a relatively new x-ray technology may be used, and by monitoring radiation exposure for at least the first year of use.

- (5) A determination of the effect of the action on competition.

The Commissioner expects these rulemaking amendments will not have a positive or negative effect on competition.

- (6) A determination of the effect of the action on the cost of living in the geographical area in which the action would occur.

The Commissioner expects these rulemaking amendments will not have a positive or negative effect on the cost of living.

- (7) A determination of the effect of the action on employment in the geographical area in which the action would occur.
- The Commissioner expects these rulemaking amendments will not have a positive or negative effect on employment.
- (8) The source of revenue to be used for the action.
- This rulemaking was funded using existing revenue.
- (9) A conclusion as to the economic impact upon all persons substantially affected by the action, including an analysis containing a description as to which persons will bear the costs of the action and which persons will benefit directly and indirectly from the action.
- Businesses in possession of hand-held x-ray devices and law enforcement agencies in possession of personnel security screening systems will be positively affected by the action. Since these businesses and law enforcement agencies are currently complying with waiver conditions that contain the same requirements as the proposed amendments, the Commissioner expects that the action will have no significant economic impact upon any person other than from avoiding the cost of generating and processing these waivers.

**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: 09-07-19  
Rule ID(s): 9237  
File Date: 9/10/19  
Effective Date: 12/9/19

# 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>	Environment and Conservation
<b>Division:</b>	Radiological Health
<b>Contact Person:</b>	Andrew Holcomb
<b>Address:</b>	William R. Snodgrass Tennessee Tower 312 Rosa L. Parks Avenue, 15th Floor Nashville, Tennessee
<b>Zip:</b>	37243
<b>Phone:</b>	(615) 532-3038
<b>Email:</b>	<a href="mailto:Andrew.holcomb@tn.gov">Andrew.holcomb@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
0400-20-06	Use of X-ray Apparatus
Rule Number	Rule Title
0400-20-06-.03	Definitions
0400-20-06-.04	General Safety Precautions
0400-20-06-.05	Medical X-ray Installations
0400-20-06-.06	Veterinary X-ray Installations
0400-20-06-.07	Analytical X-ray Installations
0400-20-06-.10	Personnel Security Screening Systems Using X-ray Radiation

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).

Chapter 0400-20-06  
Use of X-ray Apparatus

Amendments

The table of contents to Chapter 0400-20-06 is amended by adding: 0400-20-06-.10 Personnel Security Screening Systems Using X-ray Radiation.

Authority: T.C.A. §§ 68-202-101 et seq. and 4-5-201 et seq.

Paragraph (68) of Rule 0400-20-06-.03 Definitions is amended by adding subparagraph (e) to read as follows:

- (e) "Hand-held" means portable X-ray equipment that is specifically designed to operate when held in a person's hand and is approved by the U.S. Food and Drug Administration (FDA).

Authority: T.C.A. §§ 68-202-101 et seq. and 4-5-201 et seq.

Paragraph (9) of Rule 0400-20-06-.04 General Safety Precautions is amended by deleting it in its entirety and substituting instead the following:

- (9) The Division may waive compliance with the specific requirements of this Rule rule for an existing x-ray apparatus or installation if:
- (a) Such compliance would require replacement or substantial modification of the x-ray apparatus or installation; and,
  - (b) The registrant demonstrates, to the Division's satisfaction, achievement through other means, of radiation protection equivalent to that required by these regulations rules.

Authority: T.C.A. §§ 68-202-101 et seq. and 4-5-201 et seq.

Subparagraph (d) of paragraph (3) of Rule 0400-20-06-.05 Medical X-ray Installations is amended by deleting it in its entirety and substituting instead the following:

- (d) No Unless operating intraoral dental radiographic equipment designed to be operated as a hand-held device pursuant to subparagraph (3)(r) of this rule, no one except the patient should be in the room when x-ray X-ray exposures are made. If for some reason it is necessary for operating personnel to be in the room with the patient during exposures, an exposure cord shall be provided that is sufficiently long to permit operating personnel to stand at least 2 two meters from the patient and the tube head and in an area of minimal exposure to scattered and leakage radiation and outside of the primary beam.

Authority: T.C.A. §§ 68-202-101 et seq. and 4-5-201 et seq.

Subparagraph (g) of paragraph (3) of Rule 0400-20-06-.05 Medical X-ray Installations is amended by deleting it in its entirety and substituting instead the following:

- (g) Neither Unless operating intraoral dental radiographic equipment designed to be operated as a hand-held device pursuant to subparagraph (3)(r) of this rule, neither the tube housing nor the Position Indicating Device may be hand held during an exposure.

Authority: T.C.A. §§ 68-202-101 et seq. and 4-5-201 et seq.

Paragraph (3) of Rule 0400-20-06-.05 Medical X-ray Installations is amended by adding subparagraph (r) to read as follows:

- (r) The following requirements apply to any intraoral dental radiographic equipment designed to be operated as a hand-held device:
1. The registrant shall provide and require individual personnel monitoring of external occupational dose via a whole body dosimeter and extremity dosimeters for both the right and left hands to all persons who may operate the hand-held device. The registrant may be relieved of the requirement of this part after one year of personnel monitoring if the results of the personnel monitoring demonstrate that the operator of the hand-held device is not likely to receive a dose in excess of 10 percent of the limits in Rule 0400-20-05-.50, as outlined in Rule 0400-20-05-.71. The registrant shall maintain records of doses received by all individuals for whom monitoring was required pursuant to Rules 0400-20-05-.71 and 0400-20-05-.135.
  2. Registrants shall implement security and accountability procedures to prevent unauthorized use, misuse, or unauthorized removal of the hand-held device from its storage location. Immediately after learning of an incident of unauthorized use, misuse, or unauthorized removal from its storage location, a registrant shall report the incident to the Division at the contact point identified in part (3)(a)1 of Rule 0400-20-05-.141. The registrant shall maintain records of the security and accountability procedures described in this part. Said records shall be made available for review by the Division.
  3. The registrant shall ensure that:
    - (i) The operator prevents bystanders within a radius of at least six feet from the patient being examined with the hand-held device; and
    - (ii) Hand-held intraoral dental radiographic devices are not used for patient examinations in areas not designated as examination areas.
  4. The registrant shall incorporate specific information regarding hand-held devices into any initial and recurring training provided to the facility staff. The training shall contain, at a minimum, the following:
    - (i) Training on the proper operation of the hand-held device;
    - (ii) The requirements listed in parts 1 through 3 of this subparagraph; and
    - (iii) Instructions provided by the manufacturer in regard to equipment with unique features as required under 21 CFR 1020.30(h)(1)(i).<sup>2</sup>
  5. The registrant shall maintain records of the initial and recurring training provided to the facility staff described in part 4 of this subparagraph. Training records shall be made available for review by the Division and include:
    - (i) The date the training was provided;
    - (ii) The name of each individual trained (printed) and their signature;

<sup>1</sup> This part is intended to apply to intraoral radiographic units that are hand-held. Any unit designed to be hand-held but operated as a fixed unit shall be subject to the requirements outlined in paragraph (3) of Rule 0400-20-06-.05.

<sup>2</sup> "A unit that is hand-held constitutes a unique feature that requires manufacturers to describe any safety procedures and precautions necessary to reduce operator exposure." (See Guidance for Industry and FDA Staff – Radiation Safety Considerations for X-Ray Equipment Designed for Hand-Held Use, December 24, 2008, U.S. Department of Health and Human Services, Food and Drug Administration, Center for Devices and Radiological Health, Diagnostic Devices Branch, Division of Mammography Quality and Radiation Programs, Office of Communication, Education, and Radiation Programs).

- (iii) The name and dated signature of the individual providing the training;
- (iv) The topics covered in the training (or an attachment of the training material); and
- (v) The duration of the training.

Authority: T.C.A. §§ 68-202-101 et seq. and 4-5-201 et seq.

Subparagraph (a) of paragraph (2) of Rule 0400-20-06-.06 Veterinary X-ray Installations is amended by deleting it in its entirety and substituting instead the following:

- (a) (Reserved) The following requirements apply to any veterinary intraoral dental radiographic equipment designed to be operated as a hand-held device:<sup>3</sup>
  - 1. The registrant shall provide and require individual personnel monitoring of external occupational dose via a whole body dosimeter and extremity dosimeters for both the right and left hands to all persons who may operate the hand-held device. The registrant may be relieved of the requirement of this subpart after one year of personnel monitoring if the results of the personnel monitoring demonstrate that the operator of the hand-held device is not likely to receive a dose in excess of 10 percent of the limits in Rule 0400-20-05-.50, as outlined in Rule 0400-20-05-.71. The registrant shall maintain records of doses received by all individuals for whom monitoring was required pursuant to Rule 0400-20-05-.71 and 0400-20-05-.135.
  - 2. Registrants shall implement security and accountability procedures to prevent unauthorized use, misuse, or unauthorized removal of the hand-held device from its storage location. Immediately after learning of an incident of unauthorized use, misuse, or unauthorized removal from its storage location, a registrant shall report the incident to the Division at the contact point identified in part (3)(a)1 of Rule 0400-20-05-.141. The registrant shall maintain records of the security and accountability procedures described in this part. Said records shall be made available for review by the Division.
  - 3. The registrant shall ensure that:
    - (i) The operator prevents bystanders within a radius of at least six feet from the patient being examined with the hand-held device; and
    - (ii) Hand-held intraoral dental radiographic devices are not used for patient examinations in areas not designated as examination areas.
  - 4. The registrant shall incorporate specific information regarding hand-held devices into any initial and recurring training provided to the facility staff. The training shall contain, at a minimum, the following:
    - (i) Training on the proper operation of the hand-held device;
    - (ii) The requirements listed in parts 1 through 3 of this subparagraph; and
    - (iii) Instructions provided by the manufacturer in regard to equipment with unique features as required under 21 CFR 1020.30(h)(1)(i).<sup>4</sup>

<sup>3</sup> This part is intended to apply to intraoral radiographic units that are hand-held. Any unit designed to be hand-held but operated as a fixed unit shall be subject to the requirements outlined in paragraph (3) of Rule 0400-20-06-.05.

<sup>4</sup> "A unit that is hand-held constitutes a unique feature that requires manufacturers to describe any safety procedures and precautions necessary to reduce operator exposure." (See Guidance for Industry and FDA Staff – Radiation Safety Considerations for X-Ray Equipment Designed for Hand-Held Use, December 24, 2008, U.S. Department of Health and Human Services, Food and Drug Administration, Center for Devices and

5. The registrant shall maintain records of the initial and recurring training provided to the facility staff described in part 4 of this subparagraph. Training records shall be made available for review by the Division and include:
- (i) The date the training was provided;
  - (ii) The name of each individual trained (printed) and their signature;
  - (iii) The name and dated signature of the individual providing the training;
  - (iv) The topics covered in the training (or an attachment of the training material); and
  - (v) The duration of the training.

Authority: T.C.A. §§ 68-202-101 et seq. and 4-5-201 et seq.

Rule 0400-20-06-.07 Analytical X-ray Installations is amended by adding a new paragraph to read as follows:

(3) In addition to the requirements of paragraphs (1) and (2) of this rule, the following requirements apply to open-beam, hand-held, analytical X-ray devices:

(a) Procedures.

All registrants possessing open-beam, hand-held, analytical devices shall have available for review by the Division operating policies and procedures that contain measures to ensure that:<sup>5</sup>

1. Radiation protection is provided equivalent to that afforded in subparagraph (1)(d) of this rule. This shall be in the form of an operating procedure that contains, at a minimum:
  - (i) The operator's hands will not approach the primary beam;
  - (ii) The operator will not hold the sample during operation of the hand-held x-ray device;
  - (iii) The operator will not aim the primary beam at him/herself or at any individual during operation of the device; and
  - (iv) Before energizing the device, the operator will ensure that no person is within two meters of the device or sample being tested.
2. If the safety devices, which are known as the "X-ray On" warning light and the tube housing "X-ray On" indicator light, as outlined in subparagraphs (1)(c) and (1)(e) of this rule, are not of a fail-safe design, administrative controls shall be put in place in the form of an operating procedure that shall include, at a minimum:
  - (i) Discussion of the warning light(s) safety mechanism on the device, the rationale behind subparagraphs (1)(c) and (1)(e) of this rule, the absence of the fail-safe design on the device, and the potential risks to the operator should the warning light(s) fail;
  - (ii) Training the operator to visually verify that the warning light(s) is correctly working when the device is known to be generating X-rays;

---

Radiological Health, Diagnostic Devices Branch, Division of Mammography Quality and Radiation Programs, Office of Communication, Education, and Radiation Programs)

<sup>5</sup> This part is intended to apply to units that are hand-held. Analytical units designed to be hand-held but operated in a fixed configuration and not hand-held shall be subject to the requirements of subparagraph (1)(d) of this rule.

(iii) Training the operator to recognize warning light failure. For example: warning light(s) not functioning when the device is known to be generating X-rays, or if one of several warning lights is not operating;

(iv) Proper procedures for reporting an actual or suspected warning light failure; and

(v) If failure of the warning light, or any one of the warning lights if there are multiple warning lights, is confirmed, the analyzer will immediately be removed from service and returned to the manufacturer for repair. Return to service will not be permitted until necessary repair has been performed, and the maintenance record for the device updated. Such maintenance records shall be made available upon request by the Division.

3. Operator radiation exposure is as low as reasonably achievable. For example, use of ancillary equipment when possible, such as a sample holder.

(b) Extremity Monitoring.

The registrant shall provide and require individual personnel monitoring with extremity dosimeters for all operators of the hand-held device in compliance with Chapter 0400-20-05. Extremity monitoring may be discontinued after one year if the results of the personnel monitoring demonstrate that the operator of the hand-held device is not likely to receive a dose in excess of 10 percent of the limits in Rule 0400-20-05-.50, as outlined in Rule 0400-20-05-.71. The registrant shall maintain records of doses received by all individuals for whom monitoring was required pursuant to Rules 0400-20-05-.71 and 0400-20-05-.135.

(c) Training.

In addition to the training requirements of subparagraph (2)(a) of this rule, the registrant shall provide training for all users and operators on the requirements of subparagraph (a) and (b) of paragraph. Records of all user and operator training shall be maintained and made available for review by the Division. Training records shall include:

1. The date the training was provided;

2. The name of each individual trained (printed) and their signature;

3. The name and dated signature of the individual providing the training;

4. The topics covered in the training (or an attachment of the training material); and

5. The duration of the training.

Authority: T.C.A. §§ 68-202-101 et seq. and 4-5-201 et seq.

Chapter 0400-20-06 Use of X-ray Apparatus is amended by renumbering the footnotes appropriately.

Authority: T.C.A. §§ 68-202-101 et seq. and 4-5-201 et seq.

Chapter 0400-20-06  
Use of X-ray Apparatus

New Rules

Add the following to the table of contents to Chapter 0400-20-06 Use of X-ray Apparatus:

0400-20-03-.10 Personnel Security Screening Systems Using X-ray Radiation

Authority: T.C.A. §§ 68-202-101 et seq. and 4-5-201 et seq.

A new rule is added to Chapter 0400-20-06 to read as follows:

0400-20-06-.10 Personnel Security Screening Systems Using X-ray Radiation.

- (1) "Personnel security screening system" means radiation-generating equipment used for the sole purpose of screening an individual who is in custody of a law enforcement agency or persons accessing or in a vehicle accessing the secured facility perimeter in order to identify contraband items and weapons that would present a security threat within a secured facility perimeter.
- (2) X-ray devices used for personnel security screening shall be used only by law enforcement agencies at city, county, or state correctional detention facilities. No individual shall be exposed to the useful beam unless authorized by a law enforcement agency for security benefit. No individual shall be exposed to the useful beam for demonstration or frivolous purposes.
- (3) The X-ray system shall be manufactured, maintained, and operated solely for security screening purposes in strict compliance with, and fully according to, the most restrictive standards found in ANSI/HPS N43.17-2009, "Radiation Safety for Personnel Security Screening Systems Using X-Ray or Gamma Radiation," which is herein incorporated by reference. This ANSI publication may be examined and inspected at the TDEC Division of Radiological Health, WRS Tennessee Tower 15th Floor, 312 Rosa L. Parks Ave, Nashville, Tennessee 37243, and is available from the American National Standards Institute, Inc., at <http://www.hps.org/#>. The Division has determined that posting the publication on the Internet for purposes of public inspection and examination would constitute a violation of federal copyright law.
- (4) The law enforcement agency shall track radiation doses for each individual, as specified by ANSI/HPS N43.17-2009, "Radiation Safety for Personnel Security Screening Systems Using X-Ray or Gamma Radiation," to ensure the individual does not exceed the recommended dose limit.

Authority: T.C.A. §§ 68-202-101 et seq. and 4-5-201 et seq.

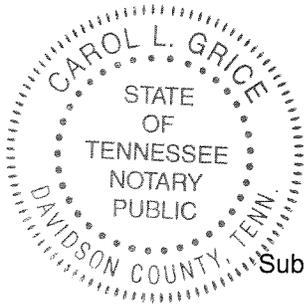
\* If a roll-call vote was necessary, the vote by the Agency on these rulemaking hearing rules was as follows:

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Commissioner on 06/07/2019 (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: (04/18/18)

Rulemaking Hearing(s) Conducted on: (add more dates). (06/19/18)



Date: 6/7/2019

Signature: [Handwritten Signature]

Name of Officer: David W. Salyers, P.E.

Title of Officer: Commissioner

Subscribed and sworn to before me on: June 7, 2019

Notary Public Signature: Carol L. Grice

My commission expires on: March 3, 2020

Agency/Board/Commission: Commissioner of the Department of Environment and Conservation

Rule Chapter Number(s): 0400-20-06

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  
8/27/2019  
Date

**Department of State Use Only**

Filed with the Department of State on: 9/10/19

Effective on: 12/9/19

[Handwritten Signature]

Tre Hargett  
Secretary of State

2019 SEP 10 PM 3:14  
SECRETARY OF STATE  
RECEIVED

## G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Environment and Conservation

DIVISION: Air Pollution Control

SUBJECT: Nitrogen Oxides

STATUTORY AUTHORITY: This rule was adopted to comply with the NOx SIP Call, a federal regulation. The changes made in this action were requested by EPA to allow adoption of the rule into Tennessee's State Implementation Plan.

EFFECTIVE DATES: December 12, 2019 through June 30, 2020

FISCAL IMPACT: None

STAFF RULE ABSTRACT: Due to federal litigation, a new federal emissions allowance-trading program (CSAPR) replaced the existing federal emissions allowance-trading program (CAIR). Sources that are large boilers and combustion turbines (known as non-electric generating units or non-EGUs) that were formerly allowed to participate in allowance trading related to ozone season emissions so that they could comply with a different federal requirement under 40 CFR § 51.121 (NOx SIP Call) are not allowed to participate in the new federal program to comply with the NOx SIP Call.

Rule 1200-03-27-.12 was amended in 2017 to establish a new compliance method similar to a former NOx budget-trading program for large boilers and combustion turbines based on an allocated budget of allowances and reporting. The limits did not require further emissions reduction measures by existing sources because Tennessee is currently well within the unchanged allowance budget.

Because EPA has requested clarifying changes to the rule in order to incorporate it into Tennessee's State Implementation Plan (SIP), this rulemaking hearing rule modifies the existing rule for large boilers and combustion turbines by:

1. Amending the definition of "affected unit" by including potential cogeneration units to ensure that

units not subject to federal regulations are subject to the state rule and amending the definition of "maximum design heat input" by adding MM to Btu/hr to correct a drafting error;

2. Clarifying the formula for allocation of NOx allowances;

3. Clarifying the requirements for a Responsible Official for purposes of compliance with 40 CFR Part 75; and

4. Deleting the reporting requirements of 1200-03-27-.12(7)(b)4.

## Public Hearing Comments

The following comment was received from the U. S. Environmental Protection Agency ("EPA") in a letter dated October 17, 2018.

Comment: In the Notice of Rulemaking Hearing, Tennessee states: "In publishing this hearing notice, Tennessee notes that the proposed addition of Subpart (1)(c)1(iii) may be redundant when considered together with the proposed changes to Part (1)(c)2. Final action on the addition of Subpart (1)(c)1(iii) will be taken after considering all relevant comments."

The EPA believes that the current proposed addition to the definition of "affected unit" at 1200-03-27-.12(1)(c)1(iii) is not redundant when considered together with the proposed revision to 1200-03-27-.12(1)(c)2. The EPA notes that the existing state regulation at 1200-03-27-.12(1)(c)2(ii), excluding "any unit that serves a generator that produces electricity for sale," is rather broad and would exclude a type of potential new unit that should be covered under the definition of affected unit (i.e., specifically, cogeneration units that would qualify for the cogeneration exemptions under the Acid Rain Program and Cross-State Air Pollution Rule (CSAPR), but that would be affected non-electric generating units (EGUs) under the NOX SIP Call). The proposed revision to 1200-03-27-.12(1)(c)2 removes this broad exclusion, while the proposed addition of 1200-03-27-.12(1)(c)1(iii) restores a narrower version that would exclude most units serving generators, but would not exclude the subset of units serving generators that should be affected non-EGUs under the NOX SIP Call.

If the proposed revision to 1200-03-27-.12(1)(c)2 is made but the new 1200-03-27-.12(1)(c)1(iii) is not added, the amended definition of "affected unit" would not have any express exclusion for units serving generators. Therefore, this would encompass any unit with a maximum design heat input greater than 250 MMBtu/hr that serves a generator with nameplate capacity of 25 MW or less (since those units would not be covered by CSAPR) and none of them would be excluded from coverage under the addition of 1200-03-27-.12(1)(c)2. As a result, without new 1200-03-27-.12(1)(c)1(iii), the amended rule would cover EGUs smaller than 25 MW such as TVA's Allen combustion turbine units 1-16, which are not required by the NOX SIP Call. Tennessee has indicated elsewhere that these units should not be included in the state trading program.

Response: The proposed addition of 1200-03-27-.12(1)(c)1(iii) was retained by the Board in the final rule.

## 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 Air Pollution Control Board (Board) anticipates that no small businesses will bear the cost of, or directly benefit from, these rule amendments. None of the existing facilities subject to the rule amendments are small businesses. Because this rule affects large emission sources in capital-intensive industries, the Board believes that any new source subject to the rule amendments would not be owned or operated by 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.

With respect to small businesses, the Board anticipates that there would be no reporting, recordkeeping, and other administrative costs required for compliance with the rule amendments, including the type of professional skills necessary for preparation of the report or record.

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

The Board expects that the proposed rule would have no effect on small businesses and consumers.

- (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 rule amendments are not projected to impact small business.

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

The rule amendments do not have a direct counterpart in the Code of Federal Regulations. The rule amended implements the requirements promulgated by EPA at 40 CFR § 51.121 (Findings and requirements for submission of State implementation plan revisions relating to emissions of oxides of nitrogen) (the "NO<sub>x</sub> SIP Call") by replacing the CAIR NO<sub>x</sub> Ozone Season Trading Program (40 CFR Part 96 Subparts AAAA through IIII), which EPA stopped administering in 2015. The requirements of the rule amended are similar to the CAIR NO<sub>x</sub> Ozone Season Trading Program, except that there is no emission trading under the new rule.

- (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 rule amendments are not projected to impact small business.

## **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 Board anticipates that this amended rule will not have a financial 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;

Due to federal litigation, a new federal emissions allowance-trading program (CSAPR) replaced the existing federal emissions allowance-trading program (CAIR). Sources that are large boilers and combustion turbines (known as non-electric generating units or non-EGUs) that were formerly allowed to participate in allowance trading related to ozone season emissions so that they could comply with a different federal requirement under 40 CFR § 51.121 (NO<sub>x</sub> SIP Call) are not allowed to participate in the new federal program to comply with the NO<sub>x</sub> SIP Call.

Rule 1200-03-27-.12 was amended in 2017 to establish a new compliance method similar to a former NO<sub>x</sub> budget- trading program for large boilers and combustion turbines based on an allocated budget of allowances and reporting. The limits did not require further emissions reduction measures by existing sources because Tennessee is currently well within the unchanged allowance budget.

Because EPA has requested clarifying changes to the rule in order to incorporate it into Tennessee's State Implementation Plan (SIP), this rulemaking modifies the existing rule for large boilers and combustion turbines by:

1. Amending the definition of "affected unit" by including potential cogeneration units to ensure that units not subject to federal regulations are subject to the state rule and amending the definition of "maximum design heat input" by adding MM to Btu/hr to correct a drafting error;
2. Clarifying the formula for allocation of NO<sub>x</sub> allowances;
3. Clarifying the requirements for a Responsible Official for purposes of compliance with 40 CFR Part 75; and
4. Deleting the reporting requirements of 1200-03-27-.12(7)(b)4.

- (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 rule was adopted to comply with the NO<sub>x</sub> SIP Call, a federal regulation. The changes made in this action were requested by EPA to allow adoption of the rule into Tennessee's State Implementation Plan.

- (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;

Owners and operators of large boilers and combustion turbines that do not produce electricity for sale are most directly affected by this rule. The Tennessee Air Pollution Control Board did not receive any comments other than from the EPA.

- (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;

The Board is not aware of any opinions that directly relate to the rulemaking.

- (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 change in state and local government revenues and expenditures is expected to result from these

amendments.

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

Travis Blake  
Division of Air Pollution Control  
William R. Snodgrass Tennessee Tower  
312 Rosa L. Parks Avenue, 15th Floor  
Nashville, Tennessee 37243  
[travis.blake@tn.gov](mailto:travis.blake@tn.gov)

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

Emily Urban  
Deputy General Counsel  
Office of 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 General Counsel  
Tennessee Department of Environment and Conservation  
William R. Snodgrass Tennessee Tower  
312 Rosa L. Parks Avenue, 2nd Floor  
Nashville, Tennessee 37243  
(615) 532-0108  
[Emily.Urban@tn.gov](mailto:Emily.Urban@tn.gov)

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

Economic Impact Statement [Tenn. Code Ann. § 4-33-104(b)]

- (1) A description of the action proposed, the purpose of the action, the legal authority for the action and the plan for implementing the action.

This rulemaking amends Rule 1200-03-27-.12 Nitrogen Oxides by amending the applicability provisions, clarifying the formula for allocation of NO<sub>x</sub> allowances, clarifying the responsible official requirements, and deleting a redundant reporting requirement. These amendments are required to obtain federal approval of the existing rule. The legal authority for this rulemaking is T.C.A. §§ 68-201-101 et seq. and 4-5-201 et seq. Because affected facilities are currently complying with the existing rule, no additional action is required by the regulated community to implement these changes.

- (2) A determination that the action is the least-cost method for achieving the stated purpose.

This rulemaking amendment consists primarily of changes requested by the U. S. EPA (EPA) for federal approval of the existing rule into Tennessee's State Implementation Plan. Failure to adopt the federal requested changes would result in disapproval of the existing rule, and EPA would be required to adopt a federal Implementation Plan to implement an equivalent regulation. The Division of Air Pollution Control (Division) on behalf of the Tennessee Air Pollution Control Board (Board) believes that state implementation of the rule compared to federal implementation is the least cost method for achieving the purpose of the rule amendments.

- (3) A comparison of the cost-benefit relation of the action to nonaction.

As stated above, not amending the rule would result in federal implementation of equivalent changes. Thus, there would be no benefit to not amending the rule as required by EPA. Failure to amend the rule to support state implementation of the rule could result in sanctions from EPA.

- (4) A determination that the action represents the most efficient allocation of public and private resources.
- These rulemaking amendments represent the most efficient allocation of public and private resources because it provides continuity in the existing regulatory structure (i.e., this rule does not impose substantial new requirements on the regulated community or the Department). This rule also improves private resource allocation by removing one redundant reporting requirement (one state reporting requirement was redundant with an equivalent federal requirement).
- (5) A determination of the effect of the action on competition.
- These rulemaking amendments would not have a positive or negative impact on competition.
- (6) A determination of the effect of the action on the cost of living in the geographical area in which the action would occur.
- These rulemaking amendments do not impose substantial new burdens upon the regulated community and the Division on behalf of the Board expects that the action will have no significant impact on the cost of living in Tennessee.
- (7) A determination of the effect of the action on employment in the geographical area in which the action would occur.
- These rulemaking amendments do not impose substantial new burdens upon the regulated community and the Division on behalf of the Board expects that the action will have no significant impact on employment in Tennessee.
- (8) The source of revenue to be used for the action.
- This rulemaking was funded using existing Title V emission fees.
- (9) A conclusion as to the economic impact upon all persons substantially affected by the action, including an analysis containing a description as to which persons will bear the costs of the action and which persons will benefit directly and indirectly from the action.
- In general, the costs of NO<sub>x</sub> reductions required by the existing rule are borne by manufacturing facilities that operate large boilers and combustion turbines. These rulemaking amendments do not impose substantial new burdens upon the regulated community, and the Division on behalf of the Board expects that the action will have no significant economic impact upon any person.

**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: 09-09-19  
 Rule ID(s): 9238  
 File Date: 9/13/19  
 Effective Date: 12/12/19

# 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>	Environment & Conservation
<b>Division:</b>	Air Pollution Control
<b>Contact Person:</b>	Travis Blake
<b>Address:</b>	William R. Snodgrass Tennessee Tower 312 Rosa L. Parks Avenue, 15th Floor Nashville, Tennessee
<b>Zip:</b>	37243
<b>Phone:</b>	(615) 532-0617
<b>Email:</b>	<a href="mailto:travis.blake@tn.gov">travis.blake@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
1200-03-27	Nitrogen Oxides
Rule Number	Rule Title
1200-03-27-.12	NO <sub>x</sub> SIP Call Requirements for Stationary Boilers and Combustion Turbines

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).

Chapter 1200-03-27  
Nitrogen Oxides

Amendments

Subparagraph (c) of paragraph (1) of Rule 1200-03-27-.12 NO<sub>x</sub> SIP Call Requirements for Stationary Boilers and Combustion Turbines is amended by deleting it in its entirety and substituting instead the following:

- (c) 1. "Affected unit" means any unit identified as an existing affected unit in subparagraph (n) of this paragraph and any unit that has the following characteristics:
- (i) The unit's maximum design heat input is greater than 250 MMBtu/hr; and
  - (ii) The unit combusts, or will combust during any year, fossil fuel in the following amounts:
    - (I) Alone or in combination with any other fuel, where fossil fuel actually combusted comprises more than 50 percent of the annual heat input on a Btu basis during any year starting in 1995 or, if a unit had no heat input starting in 1995, during the last year of operation of the unit prior to 1995; or
    - (II) Alone or in combination with any other fuel, where fossil fuel is projected to comprise more than 50 percent of the annual heat input on a Btu basis during any year, and
  - (iii) The unit:
    - (I) Does not serve a generator producing electricity for sale at any time; or
    - (II) Serves a generator producing electricity for sale at any time and qualifies under 40 CFR §72.6(b)(4) as an unaffected unit under the Acid Rain Program.
2. ~~Notwithstanding part 1 of this subparagraph: (i) Any any unit subject to 40 CFR 97 subpart EEEEE (Transport Rule CSAPR NO<sub>x</sub> Ozone Season Group 2 Trading Program) shall not be an affected unit; and (ii) Any unit that serves a generator that produces power for sale shall not be an affected unit.~~

Authority: T.C.A. §§ 68-201-101 et seq. and 4-5-201 et seq.

Subparagraph (q) of paragraph (1) of Rule 1200-03-27-.12 NO<sub>x</sub> SIP Call Requirements for Stationary Boilers and Combustion Turbines is amended by deleting it in its entirety and substituting instead the following:

- (q) "Maximum design heat input" means the maximum amount of fuel per hour (in MMBtu/hr) that a unit is capable of combusting on a steady state basis as of the initial installation of the unit as specified by the manufacturer of the unit.

Authority: T.C.A. §§ 68-201-101 et seq. and 4-5-201 et seq.

Item (II) of subpart (ii) of part 2 of subparagraph (c) of paragraph (6) of Rule 1200-03-27-.12 NO<sub>x</sub> SIP Call Requirements for Stationary Boilers and Combustion Turbines is amended by deleting it in its entirety and substituting instead the following:

- (II) For units with less than four years of heat input data, the emission rate shall be multiplied by the unit's maximum design heat input in MMBtu/hr, multiplied by 3,672 hours per control period, divided by 2,000, and rounded to the nearest whole number as appropriate.

Authority: T.C.A. §§ 68-201-101 et seq. and 4-5-201 et seq.

Part 4 of subparagraph (b) of paragraph (7) of Rule 1200-03-27-.12 NO<sub>x</sub> SIP Call Requirements for Stationary Boilers and Combustion Turbines is amended by deleting it in its entirety and substituting instead the following:

4. ~~Reserved. For the control period beginning in 2017 and each control period thereafter, the Responsible Official of an affected facility shall submit the following report no later than the compliance deadline:~~
- ~~(i) Affected facility name and address;~~
  - ~~(ii) Responsible Official name and title;~~
  - ~~(iii) Total number of allowances allocated to the affected facility for the control period;~~
  - ~~(iv) The following information for each affected unit:
    - ~~(I) Total NO<sub>x</sub> emissions (in tons) for the control period; and~~
    - ~~(II) Heat input for the control period.~~~~
  - ~~(v) A signed statement by the Responsible Official certifying the truth, accuracy, and completeness of the information provided in the report.~~

Authority: T.C.A. §§ 68-201-101 et seq. and 4-5-201 et seq.

Subparagraph (a) of paragraph (11) of Rule 1200-03-27-.12 NO<sub>x</sub> SIP Call Requirements for Stationary Boilers and Combustion Turbines is amended by deleting it in its entirety and substituting instead the following:

- (a) Except as otherwise allowed in subparagraph (b) of this paragraph, the owners and operators, and to the extent applicable, the Responsible Official, of an affected unit shall comply with the applicable monitoring, recordkeeping, and reporting requirements provided in 40 CFR part 75 for each control period. The Responsible Official shall be authorized as provided in, and shall certify each submission and may delegate his or her authority in accordance with, 40 CFR 72 subpart B.

Authority: T.C.A. §§ 68-201-101 et seq. and 4-5-201 et seq.

\* If a roll-call vote was necessary, the vote by the Agency on these rulemaking hearing 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>
<b>Dr. Ronne Adkins</b> Commissioner's Designee, Dept. of Environment and Conservation	X				
<b>Dr. John Benitez</b> Licensed Physician with experience in health effects of air pollutants	X				
<b>Karen Cisler</b> Environmental Interests	X				
<b>Stephen Gossett</b> Working for Industry with technical experience	X				
<b>Dr. Shawn A. Hawkins</b> Working in field related to Agriculture or Conservation				X	
<b>Richard Holland</b> Working for Industry with technical experience	X				
<b>Caitlin Roberts Jennings</b> Small Generator of Air Pollution representing Automotive Interests	X				
<b>Ken Moore</b> Working in Municipal Government	X				
<b>Dr. Joshua Fu</b> Involved with Institution of Higher Learning on air pollution evaluation and control				X	
<b>Mike Haverstick</b> Working in management in Private Manufacturing	X				
<b>Amy Spann, PE</b> Registered Professional Engineer				X	
<b>Larry Waters</b> County Mayor				X	
<b>Jimmy West</b> Commissioner's Designee, Dept. of Economic and Community Development	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Air Pollution Control Board on 11/14/2018, 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: 09/10/18

Rulemaking Hearing(s) Conducted on: (add more dates). 11/07/18

Date: December 20, 2018

Signature: *Michelle W. Owenby*

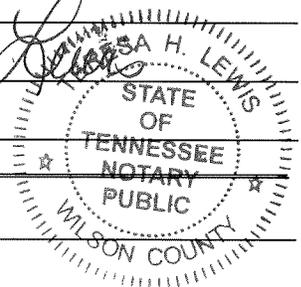
Name of Officer: Michelle W. Owenby

Title of Officer: Technical Secretary

Subscribed and sworn to before me on: Dec. 20, 2018

Notary Public Signature: *Anna D. Lewis*

My commission expires on: 10/19/2019



Agency/Board/Commission: \_\_\_\_\_

Rule Chapter Number(s): \_\_\_\_\_

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

9/11/2019  
Date

**Department of State Use Only**

Filed with the Department of State on: 9/13/19

Effective on: 12/12/19

*Tre Hargett*  
Tre Hargett  
Secretary of State

RECEIVED  
2019 SEP 13 PM 12:48  
SECRETARY OF STATE  
PUBLICATIONS

## G.O.C. STAFF RULE ABSTRACT

<u>BOARD:</u>	Water Quality, Oil and Gas
<u>DIVISION:</u>	Water Resources
<u>SUBJECT:</u>	Drilling Permits / Pollution and Safety Controls
<u>STATUTORY AUTHORITY:</u>	There is no federal law relevant to this program. These rules are adopted pursuant to Tennessee Code Annotated, § 60-1-201 et seq.
<u>EFFECTIVE DATES:</u>	December 15, 2019 through June 30, 2020
<u>FISCAL IMPACT:</u>	<p>The increase in the domestic landowner bond will not generate any revenue for the State; however, it will have an impact on the department's budget due to a decrease in expenditures incurred from plugging abandoned wells. More financial assurance will be available for plugging the abandoned wells.</p> <p>The average cost to plug a well in the state of Tennessee is \$2,800. Using an example of 400 wells plugged over a 9-year timeframe the State of Tennessee would have had to expend approximately \$920,000 {400 X \$2,300 (\$2,800-\$500) = \$920,000} to plug the abandoned wells. Using this example, and under the current rules, only \$200,000 would have been available from collected domestic gas bonds {400 X \$500 = \$200,000}. This would cover approximately 18% of the costs. With the proposed bond increase of \$1,000 (\$500 to \$1,500) an additional \$400,000 would be available for plugging these abandoned wells {400 X \$1,500 = \$600,000}. With the proposed increase the bond amount covers approximately 54% of the costs to plug the wells.</p>
<u>STAFF RULE ABSTRACT:</u>	<p>These rulemaking hearing rule amendments address insufficient financial assurance for plugging abandoned wells used for domestic heating purposes and an overly burdensome distance requirement imposed on oil tanks and batteries of tanks.</p> <ul style="list-style-type: none"><li>• For wells used by landowners for domestic gas only, the plugging bond will be increased from \$500 to \$1,500. For</li></ul>

domestic gas wells deeper than 2,500 feet, the plugging bond will be increased at a rate of \$1.00 for every foot deeper than 2,500 feet. No reclamation bond will be required for a domestic gas well that reverts back to a landowner. The increase is necessary to recover costs incurred by the State when it must plug abandoned wells. A small minority of operators transfer wells back to landowners in order to avoid plugging and reclamation requirements.

- The minimum buffer between oil tanks or batteries of tanks and state highways and local roads will be reduced to 50 feet instead of the current 100 feet. The 100-foot buffer is creating problems for well operators and landowners because it requires too much surface disturbance. This regulatory decrease will allow the landowner to use more of the land for farming or other agricultural purposes and will not sacrifice public health or safety. The buffer prevents vehicles from striking the oil tanks or batteries of tanks which could cause an explosion and allows tankers to maneuver without being affected by oncoming traffic.

**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 during the comment period.

## 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 rule amendment relative to financial assurance would affect a small business if a landowner that utilizes the well as a domestic gas well is a small business. The estimated number per year of wells affected by this rule amendment is 8-10, but the Board does not know the number that would be owned by small businesses. Typically, domestic gas wells are used for residential heating.

The proposed decrease in the distance of oil tanks or batteries of tanks to the road could affect small businesses if a landowner is a business entity that is a commercial farm by allowing additional acreage to be utilized for agricultural purposes.

- (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 will be no additional reporting, recordkeeping or other administrative costs added as a result of this rulemaking.

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

A landowner that is a small business using a domestic gas well for business operations would see an increase in the cost of obtaining financial assurance. A landowner that is a small business commercial farming operation would benefit from the additional acreage available for agricultural purposes.

- (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.

As this rulemaking was developed, the regulated community was involved and provided input on possible ways to correct existing shortcomings in the rules. The methods in this rulemaking are the least burdensome, least intrusive, and least costly alternative to address the need for additional bonding of domestic gas wells. The additional bonding provides the State with a greater portion of the amount needed to address abandoned domestic gas wells.

The proposed tank battery location rule is a less intrusive means for landowners to utilize their property for future oil production on their property. The reduction from 100 feet to 50 feet from a public or county road will allow the landowners to access more of their land for agricultural or farming purposes without sacrificing public health or safety.

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

There is no known federal counterpart. Currently, the only surrounding state that has a specific landowner bond for domestic house gas is Kentucky. The amount of the bond is \$1,000 per well. However, the states of Ohio, West Virginia, and Virginia impose bond amounts of \$5,000, \$5,000, and \$10,000 (plus a \$2,000 per acre disturbance bond) respectively for general gas production activities.

Virginia requires a 25-foot setback and Ohio requires a 50-foot setback.

- (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.

Any business entity affected by the proposed rules will be a small business. Exempting small businesses would not address inadequate funds for plugging abandoned domestic gas wells; however, the Board believes that a majority of landowners impacted by the increased bond requirement are not small businesses. Small agricultural businesses will benefit from the decreased distance requirement.

## **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 Board of Water Quality, Oil and Gas anticipates that this rulemaking will not result in an increase in expenditures or decrease in revenue for 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 amendments address insufficient financial assurance for plugging abandoned wells used for domestic heating purposes and an overly burdensome distance requirement imposed on oil tanks and batteries of tanks.

- For wells used by landowners for domestic gas only, the plugging bond will be increased from \$500 to \$1,500. For domestic gas wells deeper than 2,500 feet, the plugging bond will be increased at a rate of \$1.00 for every foot deeper than 2,500 feet. No reclamation bond will be required for a domestic gas well that reverts back to a landowner. The increase is necessary to recover costs incurred by the State when it must plug abandoned wells. A small minority of operators transfer wells back to landowners in order to avoid plugging and reclamation requirements.
- The minimum buffer between oil tanks or batteries of tanks and state highways and local roads will be reduced to 50 feet instead of the current 100 feet. The 100-foot buffer is creating problems for well operators and landowners because it requires too much surface disturbance. This regulatory decrease will allow the landowner to use more of the land for farming or other agricultural purposes and will not sacrifice public health or safety. The buffer prevents vehicles from striking the oil tanks or batteries of tanks which could cause an explosion and allows tankers to maneuver without being affected by oncoming traffic.

- (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 federal law relevant to this program. These rules are adopted pursuant to T.C.A. §60-1-201 et seq.

- (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;

Oil and gas drillers are most 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;

The Board of Water Quality, Oil and Gas is not aware of any.

- (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 increase in the domestic landowner bond will not generate any revenue for the State; however, it will have an impact on the department's budget due to a decrease in expenditures incurred from plugging abandoned wells. More financial assurance will be available for plugging the abandoned wells.

The average cost to plug a well in the state of Tennessee is \$2,800. Using an example of 400 wells plugged over a 9-year timeframe the State of Tennessee would have had to expend approximately \$920,000 {400 X \$2,300 (\$2,800-\$500) = \$920,000} to plug the abandoned wells. Using this example, and under the current rules, only \$200,000 would have been available from collected domestic gas bonds {400 X \$500 = \$200,000}. This would cover approximately 18% of the costs. With the proposed bond increase of \$1,000 (\$500 to \$1,500) an additional \$400,000 would be available for plugging these abandoned wells {400 X \$1,500 = \$600,000}. With the proposed increase the bond amount covers approximately 54% of the costs to plug the well(s).

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

Bryan Epperson  
Division of Water Resources  
Mining Section  
Knoxville Environmental Field Office  
3711 Middlebrook Pike  
Knoxville, Tennessee 37921  
865-594-5529  
[Bryan.Epperson@tn.gov](mailto:Bryan.Epperson@tn.gov)

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

Emily Urban  
Deputy General Counsel  
Office of 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 General Counsel  
Tennessee Department of Environment and Conservation  
William R. Snodgrass Tennessee Tower  
312 Rosa L. Parks Avenue, 2nd Floor  
Nashville, Tennessee 37243  
(615) 532-0108  
[Emily.Urban@tn.gov](mailto:Emily.Urban@tn.gov)

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

A letter will be submitted to the committee to address the committee's request.

**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: 09-12-19  
Rule ID(s): 9239-9240  
File Date: 9/16/19  
Effective Date: 12/15/19

# 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>	Board of Water Quality, Oil and Gas
<b>Division:</b>	Water Resources
<b>Contact Person:</b>	Bryan Epperson
<b>Address:</b>	Knoxville Environmental Field Office Division of Water Resources – Mining Section 3711 Middlebrook Pike Knoxville, Tennessee
<b>Zip:</b>	37921
<b>Phone:</b>	865-594-5529
<b>Email:</b>	<a href="mailto:Bryan.Epperson@tn.gov">Bryan.Epperson@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
0400-52-02	Permits
Rule Number	Rule Title
0400-52-02-.02	Drilling Permit

Chapter Number	Chapter Title
0400-54-01	Pollution and Safety Controls
Rule Number	Rule Title
0400-54-01-.05	Containment Pit at Tank Batteries

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).

Chapter 0400-52-02  
Permits

Amendment

Subparagraph (b) of paragraph (2) of Rule 0400-52-02-.02 Drilling Permit is amended by deleting it in its entirety and substituting instead the following:

- (b) If a well or wells revert back to a landowner, whether by court action, or by lease expiration or other provisions, and the well ~~shall~~ will remain in operation, then the landowner shall submit an Application to Change Operators (Form CN-0237), file an Organization Report (Form CN-0219), post a well plugging bond, post a reclamation bond if required, pay a fee of \$100, and otherwise comply with well spacing ~~regulations~~ rules. If the well will be used for domestic gas only, then a plugging bond in the amount of ~~\$500~~ \$1,500 shall be required. For domestic gas use wells deeper than 2,500 feet, the plugging bond shall increase at a rate of \$1.00 for every foot deeper than 2,500 feet. No reclamation bond shall be required for a well or wells that revert back to a landowner and will be used for domestic gas only.

Authority: T.C.A §§ 60-1-201 et seq., and 4-5-201 et seq.

Chapter 0400-54-01  
Pollution and Safety Controls

Amendment

Rule 0400-54-01-.05 Containment Pit at Tank Batteries is amended by adding a new sentence at the end of the introductory text, without amending the associated drawing with the title *CONSTRUCTION DETAILS FOR TANK PAD AND PIT*, so that as amended the introductory text shall read as follows:

A containment pit is required at each permanent oil tank or battery of tanks, and such pits shall be surrounded by a retaining wall or suitably ditched to a collecting sump, each of sufficient capacity and construction to contain potential spillage. ~~Tank batteries~~ No oil tank or battery of tanks shall ~~not~~ be located closer than ~~400~~ 50 feet from any state highway or county road.

Authority: T.C.A §§ 60-1-201 et seq., and 4-5-201 et seq.

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

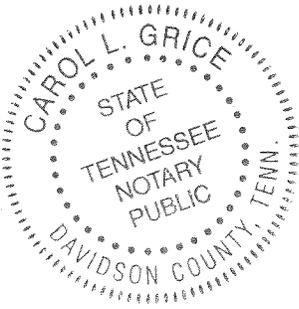
<b>Board Member</b>	<b>Aye</b>	<b>No</b>	<b>Abstain</b>	<b>Absent</b>	<b>Signature (if required)</b>
<b>Dr. Gary G. Bible</b> (Oil and Gas Industry)	X				
<b>Elaine Boyd</b> (Commissioner's Designee, Department of Environment and Conservation)	X				
<b>James W. Cameron III</b> (Small Generator of Water Pollution representing Automotive Interests)	X				
<b>Jill E. Davis</b> (Municipalities)	X				
<b>Mayor Kevin Davis</b> (Counties)	X				
<b>Derek Gernt</b> (Oil or Gas Property Owner)	X				
<b>C. Monty Halcomb</b> (Environmental Interests)				X	
<b>Charlie R. Johnson</b> (Public-at-large)				X	
<b>Judy Manners</b> (Commissioner's Designee, Department of Health)	X				
<b>John McClurkan</b> (Commissioner's Designee, Department of Agriculture)	X				
<b>Frank McGinley</b> (Agricultural Interests)	X				
<b>D. Anthony Robinson</b> (Manufacturing Industry)	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Board of Water Quality, Oil and Gas on 10/16/2018, 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: 06/21/18

Rulemaking Hearing(s) Conducted on: (add more dates). 08/28/18



Date: October 16, 2018

Signature: [Handwritten Signature]

Name of Officer: James W. Cameron III

Title of Officer: Chairman

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

Notary Public Signature: Carol L. Grice

My commission expires on: March 3, 2020

Agency/Board/Commission: Board of Water Quality, Oil and Gas

Rule Chapter Number(s): 0400-52-02 and 0400-54-01

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

8/27/2019  
Date

**Department of State Use Only**

Filed with the Department of State on: 9/16/19

Effective on: 12/15/19

[Handwritten Signature]  
Tre Hargett  
Secretary of State

SECRETARY OF STATE  
PUBLISHED

2019 SEP 16 PM 1:47

RECEIVED

## G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Tennessee Board for Licensing Contractors

DIVISION: Regulatory Boards

SUBJECT: Licensing

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

EFFECTIVE DATES: December 22, 2019 through June 30, 2020

FISCAL IMPACT: None

STAFF RULE ABSTRACT: The proposed rule clarifies that all holders of a contractor's license can only engage in projects where the total cost does not exceed the licensee's monetary limit. The change incorporates in the total project costs any and all labor and/or materials furnished by the owner.

## 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;**  
As of October 9, 2018, there are 17,400 licensed contractors, 10,120 limited licensed electricians, and 1,640 limited licensed plumbers who would be affected the by the proposed 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;**  
It is estimated that there will not be additional professional skills necessary or increased administrative costs for implementation of these proposed amendments.
- 3. A statement of the probable effect on impacted small businesses and consumers;**  
The proposed amendment clarifies the Board for Licensing Contractor's intent as it relates to monetary limits.
- 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 amendments to the existing rules are minimally burdensome and/or intrusive to small businesses.
- 5. A comparison of the proposed rule with any federal or state counterparts; and**  
The proposed amendments provide universal application to all engaged in the contracting profession as it relates to monetary limitations.
- 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.**  
These proposed rules affect licensed contractors, limited licensed electricians, and limited licensed plumbers for operation within their approved monetary limits.

### **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 impact may be on local permit offices by clarifying who can obtain permits for general contracting.

**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 proposed rule clarifies that all holders of a contractor's license can only engage in projects where the total cost does not exceed the licensee's monetary limit. The change incorporates in the total project costs any and all labor and/or materials furnished by the owner.

- (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 federal or state law or regulation mandating the promulgation of the 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;

This rule affects current and future contractors, limited licensed electricians, and limited licensed plumbers. The Board 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;

There are no opinions of the attorney general and reporter or any judicial ruling directly relating to the rule or the necessity of promulgation of the 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;

There is no probable increase or decrease in state and local government revenues and expenditures resulting from the promulgation of these rules of two percent (2%) or greater or five hundred thousand dollars (\$500,000).

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

Ashley N. Thomas  
Assistant General Counsel  
Board for Licensing Contractors  
Department of Commerce and Insurance

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

Ashley N. Thomas  
Assistant General Counsel  
Board for Licensing Contractors  
Department of Commerce and 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

Ashley N. Thomas  
500 James Robertson Parkway  
Nashville, TN 37243  
(615) 741-3072  
[Ashley.thomas@tn.gov](mailto:Ashley.thomas@tn.gov)

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

No additional information 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: 09-18-19  
Rule ID(s): 9242  
File Date: 1/23/19  
Effective Date: 12/22/19

# 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 for Licensing Contractors
<b>Division:</b>	Regulatory Boards
<b>Contact Person:</b>	Ashley N. Thomas
<b>Address:</b>	500 James Robertson Parkway
<b>Zip:</b>	37243
<b>Phone:</b>	(615) 741-3072
<b>Email:</b>	ashley.thomas@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
0680-01	Licensing
Rule Number	Rule Title
0680-01-.13	Monetary Limitations

Amendments  
Chapter 0680-01  
Monetary Limitations

0680-01-.13 Monetary Limits, paragraph 8, is amended by deleting the phrasing "other than" and substituting instead the word "including" and adding subpart (b), so that the rule reads as follows:

- (1) Generally, the monetary limitation placed on a classification of a license may be determined as follows:
  - (a) For applicants having no apparent deficiency with respect to plant or equipment, the lesser of:
    1. Ten (10) times the applicant's net worth; or
    2. Ten (10) times the applicant's working capital. Accounts receivable that are more than three (3) months overdue may not be included within the calculation of working capital.
  - (b) At the Board's discretion, renewal applicants having no apparent deficiency with respect to plant or equipment, but with limited working capital, the greater of:
    1. Ten (10) times the applicant's working capital; or
    2. Fifty percent (50%) of the applicant's net worth.
  - (c) For other applicants, a lesser amount reflecting the degree of lack of plant or equipment.
- (2) Lines of credit and indemnities (on forms furnished by the Board) may be considered to raise a monetary limitation. Lines of credit may be added up to its full value to the working capital. Credit for indemnities will be limited to fifty percent (50%). However, if the applicant has a negative working capital, lines of credit will be recognized at fifty percent (50%) of value.
- (3) A Guaranty Agreement, line of credit, bond, or other indemnity may be required in addition to the financial statement in the following situations,
  - (a) Applicants that have a primarily cash financial statement without fixed assets and;
  - (b) If an applicant company is completely or partly owned by a parent company then the Board may require the parent company to provide a financial statement along with a "Guaranty Agreement" in which the parent company agrees to guarantee the debts and obligations of the subsidiary company for all debts and obligations arising out of the contracting activities of the applicant. If the parent company cannot provide a "Guaranty Agreement" they may request the board to consider a bond in the Board's format. This bond would not be accepted in lieu of providing a financial statement.
- (4) A Guaranty Agreement may be utilized when an applicant wishes to supplement the working capital and/or net worth portion of their financial statement. The guarantor must submit a personal financial statement with a personal guaranty agreement.
- (5) The Board reserves the right to accept or decline Guaranty Agreements as a supplement to applicant financial statements depending on the individual circumstances of each application.
- (6) If a guarantor's spouse is named on the financial statement submitted with the Guaranty Agreement then the named spouse must also sign the Guaranty Agreement.
- (7) All Guaranty Agreements shall expire on the same date as the license that the agreement was provided to support.
- (8) Subject to such tolerance, no contractor shall engage, or offer to engage, in any project of which the cost (including all material and labor furnished by or through another source ~~other than including~~ the owner) would exceed the monetary limitation placed on ~~this~~ the licensee's license. If a contractor holds a license

with more than one (1) classification with different monetary limits, the monetary limits shall not be combined to bid a project.

(a) A tolerance of ten percent (10%) of the monetary limit is allowed, except for the BC-A/r licensees.

(b) All limited licensed electricians and limited licensed plumbers are subject to the limitations of section (8), including the tolerance of ten percent (10%) of the monetary limit, as set forth in subsection (a) above.

(9) Where an applicant can demonstrate having a minimum working capital and net worth of three hundred thousand dollars (\$300,000) or more, the Board may, in its discretion, award the applicant an unlimited license, allowing the contractor to bid or offer to contract on any project within a classification the contractor is licensed of any size that the contractor can financially support.

Authority: T.C.A. §§ 62-6-108, 62-6-111, and 62-6-116. Administrative History: Original rule filed July 22, 1974; effective August 21, 1974. Repeal and new rule filed January 20, 1977; effective February 19, 1977. Amendment filed May 19, 1980; effective July 3, 1980. Amendment filed September 16, 1981; effective November 2, 1981. Amendment filed October 16, 1985; effective November 15, 1985. Amendment filed January 31, 1996; effective April 16, 1996. Repeal and new rule filed October 9, 2012; effective January 7, 2013. Amendments filed June 8, 2017; to have been effective September 6, 2017. However, the Government Operations Committee filed a 45-day stay of the effective date of the rules on August 17, 2017; new effective date October 21, 2017. Amendments filed March 22, 2018; effective June 20, 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)
Ronnie Tickle				X	
Randy Chase	X				
Mark Brodd	X				
Andy Allen	X				
Jerry Hayes				X	
Ernest Owens				X	
Reese Smith	X				
Keith Whittington	X				

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Board for Licensing Contractors on 09/25/2018, 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: 6/17/19

Signature: Ashley N. Thomas

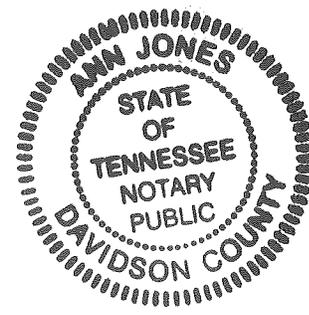
Name of Officer: Ashley N. Thomas

Title of Officer: Assistant General Counsel

Subscribed and sworn to before me on: June 17, 2019

Notary Public Signature: Ann Jones

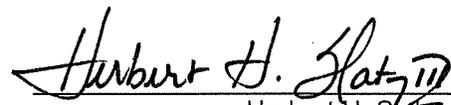
My commission expires on: July 6, 2020



Agency/Board/Commission: Board for Licensing Contractors

Rule Chapter Number(s): 0680-01-.13

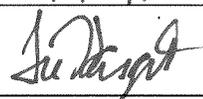
All proposed rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

  
Herbert H. Slatery III  
Attorney General and Reporter  
7/31/2019  
Date

**Department of State Use Only**

Filed with the Department of State on: 9/23/19

Effective on: 12/22/19

  
Tre Hargett  
Secretary of State

FILED  
2019 SEP 23 AM 9:10  
SECRETARY OF STATE  
PUBLICATIONS

## G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Tennessee Athletic Commission

DIVISION: Department of Commerce and Insurance

SUBJECT: Professional Boxing

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

EFFECTIVE DATES: December 24, 2019 through June 30, 2020

FISCAL IMPACT: None

STAFF RULE ABSTRACT: This proposed rule relocates the requirements related to breast protectors to the protective equipment section of the rules, and changes the breast protectors from "required" to "optional". This change is in line with the ABC Regulatory Guidelines and Rules. The intent is to give promoters and organizers more information to make safe decisions. This rule also gives inspectors leeway to make safety determinations at the fight to avoid unnecessarily disrupting an event if the mat, while containing vinyl, appears safe.

## 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 Tennessee Athletic Commission has two hundred twenty-six (226) licensed combatants, one hundred and three (103) ring officials, four hundred and thirty-five (435) seconds and eleven (11) promoters/managers. Any of these licensees that either works with or is themselves a female boxer will benefit by being given the opportunity to choose whether they wish to purchase and utilize breast protectors. Additionally, all will benefit from the cohesive application of rules between the State of Tennessee and the Association of Boxing Commissions and Combative Sports (ABC). These rules will also create a benefit to those engaging in this field by allowing a more flexible regulation on the usage of mats and by providing further guidance.

(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 are no projected reporting, recordkeeping, or other administrative costs required for the compliance with the proposed amendments.

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

Individual boxers and associated promoters will likely save money based on the lack of necessity of purchasing breast protectors, and instead, making it a choice based on the individual boxer's preferences. These rule amendments would also impact a large number of small business promoters by providing them with greater flexibility and options in purchasing and utilizing new type mats and ring setups while maintaining safety. Consumers may be affected by more contests available for viewing in the state due to more flexible regulation regarding mats due to their cost of purchase.

(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 known less burdensome alternatives to this amendment as this amendment relieves a burden rather than creates one. These rules also create greater flexibility on current regulations and do not require any recordkeeping, as such there is no additional cost created and therefore no less burdensome method could be created to achieve the purpose of these rules to benefit small businesses.

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

These amendments better align the Tennessee rules with the Association of Boxing Commissions and Combative Sports (ABC) Unified Rules of Boxing since the ABC Regulatory Guidelines and Rules indicate that breast protectors should be optional to female boxers. The ABC Regulatory Guidelines and Rules indicate female boxing gloves shall be the same as those used by males, and heavier if agreed upon. Therefore, a separate Tennessee rule for female boxers regarding gloves is not required and is inconsistent with the ABC guidelines.

There are no known state or federal counterparts regarding ring requirements as it pertains to MMA or kickboxing which are the only contests addressed in 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.

Exemption from these rules would not be expected to be beneficial for small businesses because adoption of these rules should have a net positive benefit for all Tennessee Athletic Commission licensees in the state.

## **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)

There is no projected impact to 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 relocate the requirements related to breast protectors to the protective equipment section of the rules, and change the breast protectors from required to optional. This change is in line with the ABC Regulatory Guidelines and Rules for All. Additionally, female boxer glove weight requirements have been eliminated to allow female boxers to box with the same weight gloves as male boxers, which is also in line with ABC Regulatory Guidelines and Rules for All. The rule prohibits the use of vinyl mats for safety reasons, but the amendment clarifies further what blended materials may be used and what factors the Commission may look to in determining a safe fighting surface. The intent is to give promoters and organizers more information to make safe decisions. This also gives inspectors leeway to make safety determinations at the fight to avoid unnecessarily disrupting an event if the mat, while containing vinyl, appears safe.

- (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;

The ABC Regulatory Guidelines and Rules for All set out the national standards for boxing. The amendments proposed bring Tennessee rules into alignment with the ABC. There is no federal law or regulation or state law or regulation mandating promulgation of such rule or establishing guidelines.

- (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;

These rule amendments will most directly affect female boxers and promoters/managers working with female boxers. It is anticipated female boxers and promoters would support the adoption of these amendments. Amateur organizations will most likely support the adoption of this rule. The Tennessee Athletic Commission urges the adoption of these rule amendments. These rule amendments related to vinyl mats will most directly affect amateur organizations and non-profit organizations such as the USA Olympic Team, USA Boxing, etc. Amateur organizations will most likely support the adoption of this rule. The Tennessee Athletic Commission urges the adoption of 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;

There is no known opinion of the attorney general and reporter or any judicial ruling that directly relates to the rule or the necessity to promulgate the 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;

The Tennessee Athletic Commission cannot determine any probable increase or decrease in state and local government revenues and expenditures resulting from the promulgation of these rule amendments.. It is expected that these rule amendments will increase the number of events conducted in Tennessee for amateur events; however, the amount of increase in revenue or expenditures to state and local government is unknown.

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

Pamela Spicer – Assistant General Counsel

TN Dept. of Commerce and Insurance  
Anthony Glandorf – Chief Counsel  
TN Dept. of Commerce and Insurance

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

Pamela Spicer – Assistant General Counsel  
TN Dept. of Commerce and Insurance  
  
Anthony Glandorf – Chief Counsel  
TN Dept. of Commerce and 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

Pam Spicer – Assistant General Counsel  
500 James Robertson Parkway  
Nashville, TN 37243  
615-741-3072  
Pamela.Spicer@tn.gov  
  
Anthony Glandorf – Chief Counsel  
500 James Robertson Parkway  
Nashville, TN 37243  
615-741-3072  
Anthony.Glandorf@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  
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: 09-25-19  
Rule ID(s): 9244-9245  
File Date: 9/25/19  
Effective Date: 12/24/19

# 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 Athletic Commission
<b>Division:</b>	Tennessee Department of Commerce and Insurance
<b>Contact Person:</b>	Pamela Spicer
<b>Address:</b>	500 James Robertson Parkway
<b>Zip:</b>	37243
<b>Phone:</b>	(615) 741-3072
<b>Email:</b>	Pamela.Spicer@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
0145-02	Professional Boxing
Rule Number	Rule Title
0145-02-.06	Protective Equipment
0145-02-.19	Female Boxing

Chapter Number	Chapter Title
0145-03	Kickboxing and Mixed Martial Arts
Rule Number	Rule Title
0145-03-.02	Ring

Chapter 0145-02  
Professional Boxing  
Amendments

Table of Contents Chapter 0145-02 is amended by redesignating 0145-02-.19 "Female Boxing" as "Contestants of Opposite Sexes" so that, as amended, the Table of Contents shall read:

Table of Contents

0145-02-.01 Applicability	0145-02-.13 Knockdown and Knockout
0145-02-.02 Ring	0145-02-.14 Technical Knockout
0145-02-.03 Bell	0145-02-.15 No Contest
0145-02-.04 Bandages	0145-02-.16 Stimulants
0145-02-.05 Gloves	0145-02-.17 Time Limitations
0145-02-.06 Protective Equipment	0145-02-.18 Resolution of Disputes
0145-02-.07 Shoes	0145-02-.19 <u>Female Boxing Contestants of Opposite</u>
0145-02-.08 Weight Classifications	<u>Sexes</u>
0145-02-.09 Seconds	0145-02-.20 Foul Related Injuries
0145-02-.10 Referees	0145-02-.21 Boxer Identification Card
0145-02-.11 Timekeepers	0145-02-.22 Federal Standards
0145-02-.12 Scoring	

Rule 0145-02-.06 Protective Equipment is amended by renumbering paragraph (2) as paragraph (3), and adding a new paragraph (2) so that the rule shall read:

- (1) Each boxer shall be equipped with, and use throughout the bout:
  - (a) Equipment which will preclude any claim of incapacity due to low blows; and
  - (b) A custom-made, individually fabricated mouth guard; provided, however, that a referee shall not call time for the purpose of replacing any mouthpiece which is knocked out or dropped during a bout.

~~(2) Female boxers may wear a breast protector.~~

~~(3)~~(2) Each referee and all seconds (including a manager acting as a second) shall be equipped with surgical gloves which shall be worn throughout the bout.

Authority: Chapter 1149 of the Public Acts of 2008, § 2 and T.C.A. § 68-115-201.

Rule 0145-02-.19 Female Boxing shall be redesignated as "Contestants of Opposite Sexes" and is amended by deleting paragraph (2) in its entirety so that, as amended, the rule shall read:

- ~~(1) Bouts between contestants of opposite sexes are prohibited.~~
- ~~(2) Female boxers shall be subject to provisions of this chapter, except, however that female contestants shall wear:
  - ~~(a) Gloves weighing not less than ten (10) ounces; and~~
  - ~~(b) A pelvic area protector and breast protector.~~~~

Authority: Chapter 1149 of the Public Acts of 2008, § 2 and T.C.A. § 68-115-201.

0145-03 Kickboxing and Mixed Martial Arts  
Amendments

Rule 0145-03-.02 Ring is amended by deleting the language "Vinyl or other plastic rubberized covering shall not be permitted" and adding new language to subparagraph 2(a) so that as amended, the rule shall read:

All kickboxing and mix martial arts contests or events shall be conducted in rings as follows:

- (1) For kickboxing contests or events, the ring or fighting area shall meet the following requirements:
  - (a) The ring shall be not less than seventeen feet (17') square within the ropes. The ring floor shall extend beyond the ropes not less than eighteen inches (18"). Padding must extend beyond the ring ropes and over the edge of the platform. Such floor shall be padded with a one (1) inch layer of Ensolite (or the equivalent) placed over a one (1) inch base of building board or other suitable material. The padding shall be covered with canvas, duck, or similar material tightly stretched and laced securely in place under the apron.
  - (b) The ring platform shall not be more than four feet (4') above the floor of the building, and shall be equipped with suitable steps for use by combatants. Ring posts shall be metal, not more than four inches (4") in diameter, extending from the floor of the building to a height of fifty-eight inches (58") above the ring floor, and shall be properly padded.
  - (c) Ring ropes shall be at least four (4) in number, not less than one inch (1") in diameter; the lower rope eighteen inches (18") above the ring floor, the second rope thirty inches (30") above the ring floor, the third rope forty-two inches (42") above the ring floor, and the fourth rope fifty-four inches (54") above the ring floor. The lower rope shall have applied around it a padding of a thickness of not less than one-half inch ( $\frac{1}{2}$ ") and of a type and construction to be approved by the Commission.
- (2) For all other types of mixed martial arts bouts, the ring or fighting area shall meet the requirements set forth in this section as follows:
  - (a) The ring or fighting area shall be no smaller than twenty feet (20') by twenty feet (20') and no larger than thirty-two feet (32') by thirty-two (32'). A ring enclosed by ropes shall be square. The ring floor or floor of the fighting area enclosed by ropes shall extend at least twenty inches (20") beyond the ropes. The ring floor or floor of the fighting area shall be padded with a one-inch (1") layer of Ensolite (or the equivalent) placed over a one-inch (1") base of building board or other suitable material. Padding shall extend beyond the ring or fighting area and over the edge of the platform. The ring or fighting area shall have a canvas covering or similar material, tightly stretched and laced to the ring platform. ~~Vinyl or other plastic rubberized covering shall not be permitted. Materials made up of one hundred percent (100%) vinyl or one hundred percent (100%) plastic rubberized covering shall not be permitted. Blended materials may be accepted if approved by the Commission, the Executive Director, or the Executive Director's designee prior to use at a contest. Blended materials include those of which the surface contains a combination of vinyl or similar synthetic materials. The Executive Director or the Executive Director's designee shall make a determination of approval based upon whether or not the material creates an unreasonable risk of harm to any combatant that is not present with the use of standard canvas or duct type material. Such danger shall include, but is not limited to: slipping, falling, or tears that could create lacerations to the body. The Executive Director may publish a list of material blends that have previously been determined as acceptable by the Commission. There shall not be any obstruction or object, including but not limited to a triangular border, on any part of the ring floor.~~
  - (b) The ring platform shall not be more than four feet (4') above the floor of the building. A ring enclosed by ropes shall have three (3) sets of suitable steps or ramps, one for use by each of the combatants and one for use by the officials. A ring enclosed by a fence shall have two (2) sets of suitable steps or ramps for use by the combatants and the officials. Ringside tables shall be no higher than ring platform level. Ring posts for a ring enclosed by ropes shall be metal, not less than three inches (3") nor more than six inches (6") in diameter, extending from the floor of the building to a maximum height of six inches (6") above the highest horizontal rope above the ring floor. Ring posts for a ring enclosed by ropes shall be separated from the ring ropes by at least eighteen inches (18"). The posts for a ring enclosed by a fence shall extend from the floor to the

top of the fighting area and shall be no less than sixty-six inches (66") and no more than seventy-eight inches (78") above the floor of the fighting area. All posts shall be properly padded in a manner approved by the Commission.

- (c) The ring shall be enclosed by either of the following:
- (1) A fence made of such material as will not allow a combatant to fall out or break through it on to the floor or spectators, including but not limited to vinyl-coated chain link. However, the enclosure shall not obstruct or limit the supervision and regulation of the bout by the officials or Commission representatives. All metal parts shall be covered and padded in a manner approved by the Commission and shall not be abrasive to the combatants; or
  - (2) Four (4) or Five (5) horizontal ropes not less than 1 inch (1") in diameter and wrapped in soft material. In the event a four (4) rope ring is used, the spacing of the ropes shall be that specified in Rule 0145-02-.02(4). In the event a five (5) rope ring is used, the lowest rope shall be not less than five inches (5") nor more than eight (8") inches above the floor. The second rope shall be not less than eight inches (8") nor more than twelve inches (12") above the lowest rope. The top three (3) ropes shall be spaced equal distance apart and not less than twelve inches (12") nor more than fourteen inches (14") from each other. The lowest rope shall have a padding of a thickness of not less than one-half inch ( $\frac{1}{2}$ ") applied around it. The horizontal ropes shall be tied together by vertical ropes not less than one-fourth inch ( $\frac{1}{4}$ ") in diameter. If a ring is less than twenty-four feet (24') by twenty-four feet (24'), there shall be two (2) vertical ropes, spaced equal distance apart, on each side of the ring. If a ring is twenty-four feet (24') by twenty-four (24') or greater, there shall be three (3) vertical ropes, spaced equal distance apart, on each side of the ring. The lowest portion of each vertical rope, between the lowest horizontal rope and second rope, shall have a padding of a thickness of not less than one-fourth inch ( $\frac{1}{4}$ ") applied around them.

Authority: Chapter 1149 of the Public Acts of 2008, § 2 and T.C.A. § 68-115-201.

\* 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)
Donald Wynn	x				
Steve Hannah				x	
Dr. Christy Halbert	x				
Patrick Wrenn	x				

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the (board/commission/other authority) on December 17, 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: 7-23-2019

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

Name of Officer: Pamela Spicer

Title of Officer: Assistant General Counsel

Subscribed and sworn to before me on: 7/23/2019

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

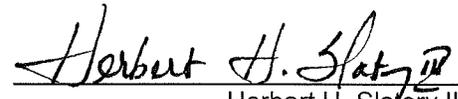
My commission expires on: 9/7/2021



Agency/Board/Commission: Tennessee Athletic Commission

Rule Chapter Number(s): 0145-02

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. Slattery III  
Attorney General and Reporter  
8/27/2019  
Date

**Department of State Use Only**

Filed with the Department of State on: 9/25/19

Effective on: 12/24/19

  
Tre Hargett  
Secretary of State

2019 SEP 25 AM 10:53  
SECRETARY OF STATE  
PUBLICATIONS

## G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Commerce and Insurance

DIVISION: Securities

SUBJECT: Securities Registration and Sales Exemptions

EFFECTIVE DATES: December 29, 2019 through June 30, 2020

FISCAL IMPACT: None

STAFF RULE ABSTRACT: Tenn. Comp. R. & Regs. 0780-04-02-.18 Tier 2 of Regulation A Secondary Sales Exemption is identical to the proposed model rule of the North American securities Administrators Association, Inc. ("NASAA"), which was designed to facilitate secondary trading in securities of Regulation A, Tier 2 issuers. Adoption of this will ensure uniformity amongst the states regarding these secondary transactions. The proposed rule exempts these transactions from registration in Tennessee as required by Tennessee Code Annotated, Section 48-1-104. Tenn. Comp. R. & Regs. 0780-04-02-.18 will not change any previous regulations.

## 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 analysis set forth by T.C.A. § 4-5-403 is as follows:

**(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.**

This new proposed exemption rule minimally affects small businesses and creates no additional cost. If a small business is involved and it relies on this rule's exemption, then the small business would be exempt from the registration process and the fees associated with registering its securities transactions in Tennessee.

**(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 new proposed exemption rule requires no fee or additional cost. The exemption is in lieu of requiring registration, which requires a fee. In addition, the reporting requirements for the new proposed rule are less burdensome than requiring registration.

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

This new proposed rule will minimally affect small businesses and consumers.

**(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 Division does not believe there are any less burdensome or less costly alternative methods since the new proposed exemption rule provides an exemption from registration, which in itself is a less burdensome method.

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

This rule is the proposed model rule of the North American Securities Administrators Association, Inc. ("NASAA"), which was designed to facilitate secondary trading in securities of Regulation A, Tier 2 issuers. Adoption of this rule will ensure uniformity amongst the states regarding these secondary transactions. There is a federal counterpart provided in 17 C.F.R. § 230.257(b), which requires issuers of securities that rely on Tier 2 of Regulation A to meet ongoing reporting requirements.

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

Exempting small businesses from this new proposed exemption rule would create more requirements for, and a larger burden 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 new proposed rule Tenn. Comp. R. Regs. 0780-04-02-.18 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;

Tenn. Comp. R. & Regs. 0780-04-02-.18 Tier 2 of Regulation A Secondary Sales Exemption is identical to the proposed model rule of the North American Securities Administrators Association, Inc. ("NASAA"), which was designed to facilitate secondary trading in securities of Regulation A, Tier 2 issuers. Adoption of this rule will ensure uniformity amongst the states regarding these secondary transactions. The rule exempts these transactions from registration in Tennessee as required by Tenn. Code Ann. § 48-1-104. Tenn. Comp. R. & Regs. 0780-04-02-.18 will not change any previous regulations.

- (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;

No federal law or regulation mandates promulgation of this new proposed exemption 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;

Secondary issuers of small public offerings of securities that do not exceed \$50 million in one year will be most affected. It is likely that issuers involved in this type of transaction would urge adoption of this rule as the rule would exempt them from registration; however, the Division does not know whether small offering issuers urge adoption or rejection 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;

The Division is unaware of any opinions of the attorney general or any judicial ruling that directly relates to the rule or the necessity to promulgate the 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;

It is estimated that there will be no increase or decrease in the state and local government revenues and expenditures.

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

Elizabeth Bowling, Director of Registration;  
Virginia N. Smith, Assistant General Counsel for Securities.

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

Virginia N. Smith, Assistant General Counsel for Securities, and Elizabeth Bowling, Director of Registration.

- (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

500 James Robertson Parkway, Nashville, TN 37243; 615-291-5890; Virginia.smith@tn.gov.

(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: 09-37-19  
Rule ID(s): 9254  
File Date: 9/30/19  
Effective Date: 12/29/19

## 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 Department of Commerce and Insurance
<b>Division:</b>	Securities Division
<b>Contact Person:</b>	Virginia Smith
<b>Address:</b>	500 James Robertson Parkway, Nashville, TN
<b>Zip:</b>	37243
<b>Phone:</b>	615-291-5890
<b>Email:</b>	Virginia.Smith@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
0780-04-02	Securities Registration and Exemptions
Rule Number	Rule Title
0780-04-02.18	Tier 2 of Regulation A Secondary Sales Exemption

Chapter Number	Chapter Title
Rule Number	Rule Title

**RULES OF  
TENNESSEE DEPARTMENT OF COMMERCE AND INSURANCE DIVISION OF SECURITIES**

**CHAPTER 0780-04-02  
SECURITIES REGISTRATION AND EXEMPTIONS**

**TABLE OF CONTENTS**

0780-04-02-.01	Registration by Coordination	0780-04-02-.10	NASDAQ/NMS Exemption
0780-04-02-.02	Registration by Qualification	0780-04-02-.11	Rescission Offers
0780-04-02-.03	Securities Registration Generally	0780-04-02-.12	Notice Filings for Covered Securities
0780-04-02-.04	Advertising and Sales Literature	0780-04-02-.13	Notice Filings for Exempt Employee Plans
0780-04-02-.05	Renewals	0780-04-02-.14	Notice Filings for Securities Sold to Accredited Investors
0780-04-02-.06	Standards of Fairness and Reasonableness	0780-04-02-.15	Bank Holding Company Exemption
0780-04-02-.07	Non-Profit Exemption	0780-04-02-.16	Unsolicited Transaction Exemption
0780-04-02-.08	Reserved	0780-04-02-.17	Invest Tennessee Exemption
0780-04-02-.09	Successor Corporate Issuers	0780-04-02-.18	<u>Tier 2 of Regulation A Secondary Sales Exemption</u>

**0780-04-02-.18 TIER 2 OF REGULATION A SECONDARY SALES EXEMPTION**

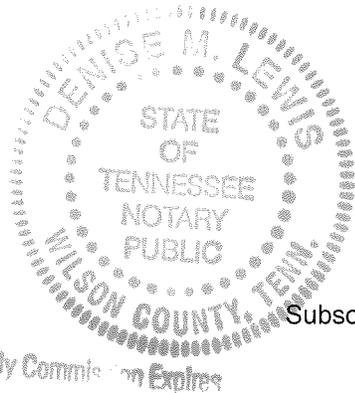
- (1) By the authority delegated to the commissioner in T.C.A. §§ 48-1-103(b)(11) and 48-1-116, the following transactions are determined to be exempt from the requirements of T.C.A. § 48-1-104:
- (2) Any non-issuer transaction by a registered agent of a registered broker-dealer in a security of a class that has been outstanding in the hands of the public for at least 90 days by an issuer that previously sold securities in an offering qualified under Tier 2 of Regulation A, codified at 17 CFR §230.251 et seq., provided that at the time of the transaction:
  - (a) The issuer is subject to and current in its ongoing reporting requirements under 17 CFR §230.257(b);
  - (b) The issuer of the security is actually engaged in business and not in the organizational stage or in bankruptcy or receivership and is not a blank check, blind pool or shell company whose primary plan of business is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person or persons;
  - (c) The security is sold at a price reasonably related to the current market price of the security;
  - (d) The security does not constitute the whole or part of an unsold allotment to, or a subscription or participation by, the broker-dealer as an underwriter of the security; and
  - (e) The issuer of the security has a class of equity securities listed on a national securities exchange registered under the Securities Exchange Act of 1934, or designated for trading on the National Association of Securities Dealers Automated Quotation System (NASDAQ), unless:
    1. The issuer of the security has been engaged in continuous business (including predecessors) for at least three years, or
    2. The issuer of the security has total assets of at least \$2,000,000 based on an audited balance sheet as of a date within 18 months or, in the case of a reorganization or merger where parties to the reorganization or merger had such audited balance sheet, a pro forma balance sheet.

**Authority:** T.C.A. §§ 48-1-103(b), 48-1-104, and 48-1-116.

\* 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 7/29/19 (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 ninety (90) days of the filing of the proposed rule with the Secretary of State.



Date: 7/29/19

Signature: Carter Lawrence

Name of Officer: Carter Lawrence

Title of Officer: Interim Commissioner, Department of Commerce and Insurance

Subscribed and sworn to before me on: 7/29/19

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): 0780-04-02-.18

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  
9/27/2019  
 Date

**Department of State Use Only**

Filed with the Department of State on: 9/30/19

Effective on: 12/29/19

Tre Hargett

Tre Hargett  
 Secretary of State

SECRETARY OF STATE  
 PROVISIONS  
 2019 SEP 30 PM 12:32

## G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Commerce and Insurance

DIVISION: Securities

SUBJECT: Securities Registration and Manual Exemptions

EFFECTIVE DATES: December 29, 2019 through June 30, 2020

FISCAL IMPACT: None

STAFF RULE ABSTRACT: Tenn. Comp. R. & Regs. 0780-04-02-.19 Manual Exemption is substantially similar to the proposed model rule (July 2018) of the North American Securities Administrators Association, Inc. ("NASAA"), which was designed to facilitate secondary trading in securities of issuers about which there is publicly available information, as provided in nationally recognized securities manuals or its electronic equivalent. Tenn. Comp. R. & Regs. 078004-02-.19 (1) provides an exemption for these types of non-issuer transactions pursuant to Tenn. Code Ann. § 48-1-103(b), (2) eliminates the requirement of registration, for these types of transactions, as set forth in Tennessee Code Annotated, Section 48-1-104, and (3) includes a definition of the term "nationally recognized securities manuals or its electronic equivalent." Adoption of this rule will ensure uniformity amongst the states regarding these non-issuer transactions as other states implement the NASAA proposed model rule (or a substantial equivalent). Tenn. Comp. R. & Regs. 0780-04-02-.19 will not change any previous regulations.

## 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 analysis set forth by T.C.A. § 4-5-403 is as follows:

**(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.**

This new proposed rule exemption minimally affects small businesses and creates no additional cost. If a small business is impacted, then the small business would be exempt from the registration process and the fees associated with registering its securities transactions in Tennessee.

**(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 new proposed exemption rule requires no fee or additional cost. The exemption is in lieu of requiring registration, which requires a fee. In addition, the reporting requirements for the new proposed rule are less burdensome than requiring registration.

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

This new proposed exemption rule will minimally affect small businesses and consumers.

**(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 Division does not believe there are any less burdensome or less costly alternative methods. The new proposed exemption rule provides an exemption from registration, which in itself is a less burdensome method.

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

This rule, which establishes a limited manual exemption from securities registration, is designed to facilitate non-issuer transactions and is substantially similar to the proposed model rule (July 2018) of the North American Securities Administrators Association, Inc.'s ("NASAA"). Adoption of this rule in Tennessee will promote uniformity amongst the states regarding these secondary transactions as other states implement the NASAA proposed model rule (or a substantial equivalent). There are no federal or state counterparts.

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

Exempting small businesses from this new proposed exemption rule would create more requirements for, and a larger burden 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 new proposed rule Tenn. Comp. R. Regs. 0780-04-02-.19 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;

Tenn. Comp. R. & Regs. 0780-04-02-.19 Manual Exemption is substantially similar to the proposed model rule (July 2018) of the North American Securities Administrators Association, Inc. ("NASAA"), which was designed to facilitate secondary trading in securities of issuers about which there is publicly available information, as provided in nationally recognized securities manuals or its electronic equivalent. Tenn. Comp. R. & Regs. 0780-04-02-.19 (1) provides an exemption for these types of non-issuer transactions pursuant to Tenn. Code Ann. § 48-1-103(b), (2) eliminates the requirement of registration, for these types of transactions, as set forth in Tenn. Code Ann. § 48-1-104, and (3) includes a definition of the term "nationally recognized securities manuals or its electronic equivalent." Adoption of this rule will ensure uniformity amongst the states regarding these non-issuer transactions as other states implement the NASAA proposed model rule (or a substantial equivalent). Tenn. Comp. R. & Regs. 0780-04-02-.19 will not change any previous regulations.

- (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;

No federal law or regulation mandates promulgation of this new proposed 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;

Registered agents of registered broker-dealers, and sponsors of unit investment trusts that are involved in non-issuer transactions are most directly affected by this rule and it is unlikely that they would urge rejection 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;

The Division is unaware of any opinions of the attorney general or any judicial ruling that directly relates to the rule or the necessity to promulgate the 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;

It is estimated that there will be no increase or decrease in the state and local government revenues and expenditures.

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

Elizabeth Bowling, Director of Registration;  
Virginia N. Smith, Assistant General Counsel for Securities.

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

Virginia N. Smith, Assistant General Counsel for Securities and Elizabeth Bowling, Director of Registration.

- (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

500 James Robertson Parkway, Nashville, TN 37243; Smith: 615-291-5890; Bowling: 615-770-0088;  
Virginia.Smith@tn.gov; Elizabeth.Bowling@tn.gov

(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: 09-38-19  
Rule ID(s): 9255  
File Date: 9/30/19  
Effective Date: 12/29/19

## 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 Department of Commerce and Insurance
<b>Division:</b>	Securities Division
<b>Contact Person:</b>	Virginia Smith
<b>Address:</b>	500 James Robertson Parkway, Nashville, TN
<b>Zip:</b>	37243
<b>Phone:</b>	615-291-5890
<b>Email:</b>	Virginia.Smith@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
0780-04-02	Securities Registration and Exemptions
Rule Number	Rule Title
0780-04-02.19	Manual Exemption

Chapter Number	Chapter Title
Rule Number	Rule Title

**RULES OF  
TENNESSEE DEPARTMENT OF COMMERCE AND INSURANCE DIVISION OF SECURITIES**

**CHAPTER 0780-04-02  
SECURITIES REGISTRATION AND EXEMPTIONS**

**TABLE OF CONTENTS**

0780-04-02-.01	Registration by Coordination	0780-04-02-.10	NASDAQ/NMS Exemption
0780-04-02-.02	Registration by Qualification	0780-04-02-.11	Rescission Offers
0780-04-02-.03	Securities Registration Generally	0780-04-02-.12	Notice Filings for Covered Securities
0780-04-02-.04	Advertising and Sales Literature	0780-04-02-.13	Notice Filings for Exempt Employee Plans
0780-04-02-.05	Renewals	0780-04-02-.14	Notice Filings for Securities Sold to Accredited Investors
0780-04-02-.06	Standards of Fairness and Reasonableness	0780-04-02-.15	Bank Holding Company Exemption
0780-04-02-.07	Non-Profit Exemption	0780-04-02-.16	Unsolicited Transaction Exemption
0780-04-02-.08	Reserved	0780-04-02-.17	Invest Tennessee Exemption
0780-04-02-.09	Successor Corporate Issuers	0780-04-02-.18	Tier 2 of Regulation A Secondary Sales Exemption
		0780-04-02-.19	Manual Exemption

**0780-04-02-.19 MANUAL EXEMPTION**

- (1) By the authority delegated to the commissioner in T.C.A. §§ 48-103(b)(11) and 48-1-116, the following non-issuer transaction is exempt from the registration requirement provided in T.C.A. § 48-1-104.
- (2) Any non-issuer transaction by a registered agent of a registered broker-dealer, and any resale transaction by a sponsor of a unit investment trust registered under the Investment Company Act of 1940, in a security of a class that has been outstanding in the hands of the public for at least ninety (90) days, provided, at the time of the transaction:
  - (a) The issuer of the security is actually engaged in business and not in the organizational stage or in bankruptcy or receivership and is not a blank check, blind pool or shell company whose primary plan of business is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person or persons.
  - (b) The security is sold at a price reasonably related to the current market price of the security.
  - (c) The security does not constitute the whole or part of an unsold allotment to, or a subscription or participation by, the broker-dealer as an underwriter of the security.
  - (d) There exists a nationally recognized securities manual or its electronic equivalent designated by rule or order of the commissioner or a document filed with the U.S. Securities & Exchange Commission (SEC) which is publicly available through the SEC's Electronic Data Gathering and Retrieval System (EDGAR), containing:
    1. A description of the business and operations of the issuer.
    2. The names of the issuer's officers and the names of the issuer's directors, if any, or, in the case of a non-U.S. issuer, the corporate equivalents of such persons in the issuer's country of domicile.
    3. An audited balance sheet of the issuer as of a date within eighteen (18) months, or in the case of a reorganization or merger where parties to the reorganization or merger had such audited balance sheet, a pro forma balance sheet, and

4. An audited income statement for each of the issuer's immediately preceding two (2) fiscal years, or for the period of existence of the issuer, if in existence for less than two (2) years or, in the case of a reorganization or merger where the parties to the reorganization or merger had such audited income statement, a pro forma income statement, and
- (e) The issuer of the security has a class of equity securities listed on a national securities exchange registered under the Securities Exchange Act of 1934, or designated for trading on the National Association of Securities Dealers Automated Quotation System (NASDAQ), unless
  1. The issuer of the security is a unit investment trust registered under the Investment Company Act of 1940, or
  2. The issuer of the security has been engaged in continuous business (including predecessors) for at least three (3) years, or
  3. The issuer of the security has total assets of at least two million dollars (\$2,000,000) based on an audited balance sheet as of a date within eighteen (18) months or, in the case of a reorganization or merger where parties to the reorganization or merger had such audited balance sheet, a pro forma balance sheet.
- (3) Definition. For the purposes of this Manual Exemption rule, "nationally recognized securities manuals or its electronic equivalent" shall include Mergent's Investor Service, and OTC Markets Group Inc. with respect to securities included in the OTCQX and OTCQB markets.

**Authority** T.C.A. §§ 48-1-103(b)(11), 48-1-104, and 48-1-116.

\* 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 7/29/19 (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 ninety (90) days of the filing of the proposed rule with the Secretary of State.



Date: 7/29/19

Signature: Carter Lawrence

Name of Officer: Carter Lawrence

Title of Officer: Interim Commissioner, Department of Commerce and Insurance

Subscribed and sworn to before me on: 7/29/19

Notary Public Signature: Nerise M. Prins

My commission expires on: 1/15/20

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

Rule Chapter Number(s): 0780-04-02-.19

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.

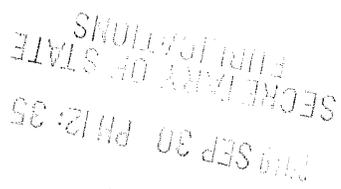
Herbert H. Slatery III  
 Herbert H. Slatery III  
 Attorney General and Reporter  
9/27/2019 Date

**Department of State Use Only**

Filed with the Department of State on: 9/30/19

Effective on: 12/29/19

Tre Hargett  
 Tre Hargett  
 Secretary of State



## G.O.C. STAFF RULE ABSTRACT

<u>DEPARTMENT:</u>	University of Tennessee
<u>CAMPUS:</u>	Chattanooga
<u>SUBJECT:</u>	Honor System
<u>STATUTORY AUTHORITY:</u>	There is no federal or state law or regulation mandating the promulgation of this rule.
<u>EFFECTIVE DATES:</u>	December 29, 2019 through June 30, 2020
<u>FISCAL IMPACT:</u>	None
<u>STAFF RULE ABSTRACT:</u>	<p>On March 29, 2017, the University of Tennessee Board of Trustees (Board) approved substantial revisions to the student code of conduct for The University of Tennessee, Knoxville (UTK) following a comprehensive review by UTK of its student conduct policies and procedures, which included a review of UTK's honor code policies and procedures. Prompted by the revision of the UTK student code of conduct, the Board requested that the other UT campuses conduct similar reviews of their respective student codes of conduct.</p> <p>In 2017, the University of Tennessee at Chattanooga (UTC) tasked its Division of Student Affairs to conduct a similar comprehensive review of the UTC Student Code of Conduct and the UTC Honor Code.</p> <p>In contrast to UTK's honor code, the UTC Honor Code (Honor Code) is contained in a separate chapter of the Rules of The University of Tennessee (apart from UTC's Student Code of Conduct). No revisions to the Honor Code have been made since 1999.</p> <p>UTC's Division of Student Affairs developed a new Honor Code to improve clarity and organization, to effect needed changes in UTC academic misconduct policy and process, to ensure consistency with University policy and current law, and to remove redundant or obsolete provisions. UTC's Division of Student Affairs solicited and received</p>

feedback from students, including the UTC Student Government Association and the UTC Graduate Student Association, regarding proposed changes to the Honor Code.

The proposed Honor Code contains several substantive changes to the current procedures and processes utilized for resolving violations of the Honor Code, which are detailed below. The most significant change is that it provides a third hearing option (i.e., a hearing before a single Honor Code Officer) in addition to the two hearing options currently available - Honor Court hearing and UAPA hearing. The Honor Code Officer Hearing option was added to allow for more efficient resolution of Honor Code cases, particularly in cases that arise at the end of the semester when it is challenging to convene the necessary quorum for the Honor Court to hear a case. The hearing processes and procedures under the proposed Honor Code more closely align generally with the hearing processes and procedures for UTC Student Code of Conduct violations than do the current Honor Code hearing processes and procedures.

The proposed Honor Code:

- Reorganizes and consolidates the sections of the Honor Code to improve clarity;
- Adds a new section that lists the defined terms utilized in the Honor Code to improve clarity, including a definition of "complainant" that clarifies that a complainant for purposes of reporting an alleged Honor Code violation is not limited to a faculty member but may also include a staff employee or student. The terminology of the current Honor Code is also revised and updated for several defined terms (e.g., the "Honor Court" is now referred to as the "Honor Code Board") (Section .02);
- Adds a new section that clarifies the jurisdictional scope of the Honor Code, including by more clearly defining when a student is subject to the Honor Code and clarifying that Honor Code violations are resolved through the Honor Code Process instead of the student conduct process under the UTC Student Code of Conduct (Section .03);
- Adds language clarifying the effect of an Honor Code case on an accused student's coursework during the pendency of the case (Section .03(6));
- Adds language that describes in more detail the types of academic dishonesty that constitute violations of the Honor Code (Section .04);
- Adds language that clarifies the due process rights of students during the Honor Code Process, including the right of students to an advisor during the Honor Code Process (Section .05);

- Adds language that further explains the initial and pre-resolution stages of the Honor Code Process, including further explanation of the information an accused student will receive in a notice of allegations and notice of charges, and establishing a "Preliminary Meeting" stage during which an accused student has the opportunity to provide information to the Office of Student Conduct prior to the Office of Student Conduct making a determination as to whether a notice of charges should be issued against the student (Section .06);
- Adds language that further explains the methods of resolution of Honor Court cases (Section .07);
- Adds language that establishes an Honor Code Officer Hearing as a third hearing option for resolution of Honor Code cases and the circumstances under which such a hearing is offered (Section .07(1)(a)(1));
- Clarifies when a student may contest allegations of violations of the Honor Code through a hearing under the Uniform Administrative Procedures Act (UAPA) (Section .07(1)(a)(3));
- Adds language providing further explanation of when and how a case may be resolved by a resolution agreement (Section .07(2));
- Adds language to provide further explanation of the Honor Code Officer Hearing process (Section .08);
- Adds language to provide further explanation of the Honor Code Board Hearing process (Section .09);
- Revises the composition of the Honor Code Board and how board members are selected (Section .09(2));
- Adds language clarifying the types of disciplinary sanctions that may be issued for Honor Code violations and the manner in which such sanctions apply, and adds language which affirmatively trespasses suspended students from campus until such time that they are readmitted (Section .10);
- Clarifies the process for appealing decisions by Honor Code Officers and Honor Code Boards (Section .11);
- Removes the right to appeal to the Chancellor, the final decision on appeal is now made by the Provost (Section .11 (1)(e)(3));
- Adds language explaining how records of Honor Code violations are maintained and when they are subject to disposal (Section .12).

## **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 rule is not anticipated to have an impact 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 Regula(<http://publications.tnsosfiles.com/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

The rule is not anticipated to have an impact on local government.

## 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;

On March 29, 2017, the UT Board of Trustees (Board) approved substantial revisions to the student code of conduct for The University of Tennessee, Knoxville (UTK) following a comprehensive review by UTK of its student conduct policies and procedures, which included a review of UTK's honor code policies and procedures. Prompted by the revision of the UTK student code of conduct, the Board requested that the other UT campuses conduct similar reviews of their respective student codes of conduct. In 2017, the University of Tennessee at Chattanooga (UTC) tasked its Division of Student Affairs to conduct a similar comprehensive review of the UTC Student Code of Conduct and the UTC Honor Code.

In contrast to UTK's honor code, the UTC Honor Code (Honor Code) is contained in a separate chapter of the Rules of The University of Tennessee (apart from UTC's Student Code of Conduct). No revisions to the Honor Code have been made since 1999.

UTC's Division of Student Affairs developed a new Honor Code to improve clarity and organization, to effect needed changes in UTC academic misconduct policy and process, to ensure consistency with University policy and current law, and to remove redundant or obsolete provisions. UTC's Division of Student Affairs solicited and received feedback from students, including the UTC Student Government Association and the UTC Graduate Student Association, regarding proposed changes to the Honor Code.

The proposed Honor Code contains several substantive changes to the current procedures and processes utilized for resolving violations of the Honor Code, which are detailed below. The most significant change is that it provides a third hearing option (i.e., a hearing before a single Honor Code Officer) in addition to the two hearings options currently available—Honor Court hearing and UAPA hearing. The Honor Code Officer Hearing option was added to allow for more efficient resolution of Honor Code cases, particularly in cases that arise at the end of the semester when it is challenging to convene the necessary quorum for the Honor Court to hear a case. The hearing processes and procedures under the proposed Honor Code more closely align generally with the hearing processes and procedures for UTC Student Code of Conduct violations than do the current Honor Code hearing processes and procedures.

The proposed Honor Code:

- Reorganizes and consolidates the sections of the Honor Code to improve clarity
- Adds a new section that lists the defined terms utilized in the Honor Code to improve clarity, including a definition of "complainant" that clarifies that a complainant for purposes of reporting an alleged Honor Code violation is not limited to a faculty member but may also include a staff employee or student. The terminology of the current Honor Code is also revised and updated for several defined terms (e.g., the "Honor Court" is now referred to as the "Honor Code Board") (Section .02)
- Adds a new section that clarifies the jurisdictional scope of the Honor Code, including by more clearly defining when a student is subject to the Honor Code and clarifying that Honor Code violations are resolved through the Honor Code Process instead of the student conduct process under the UTC Student Code of Conduct (Section .03)
- Adds language clarifying the effect of an Honor Code case on an accused student's coursework during the pendency of the case (Section .03(6))
- Adds language that describes in more detail the types of academic dishonesty that constitute violations of the Honor Code (Section .04)
- Adds language that clarifies the due process rights of students during the Honor Code Process, including the right of students to an advisor during the Honor Code Process (Section .05)

- Adds language that further explains the initial and pre-resolution stages of the Honor Code Process, including further explanation of the information an accused student will receive in a notice of allegations and notice of charges, and establishing a “Preliminary Meeting” stage during which an accused student has the opportunity to provide information to the Office of Student Conduct prior to the Office of Student Conduct making a determination as to whether a notice of charges should be issued against the student (Section .06)
- Adds language that further explains the methods of resolution of Honor Court cases (Section .07)
- Adds language that establishes an Honor Code Officer Hearing as a third hearing option for resolution of Honor Code cases and the circumstances under which such a hearing is offered (Section .07(1)(a)(1))
- Clarifies when a student may contest allegations of violations of the Honor Code through a hearing under the Uniform Administrative Procedures Act (UAPA) (Section .07(1)(a)(3))
- Adds language providing further explanation of when and how a case may be resolved by a resolution agreement (Section .07(2))
- Adds language to provide further explanation of the Honor Code Officer Hearing process (Section .08)
- Adds language to provide further explanation of the Honor Code Board Hearing process (Section .09)
- Revises the composition of the Honor Code Board and how board members are selected (Section .09(2))
- Adds language clarifying the types of disciplinary sanctions that may be issued for Honor Code violations and the manner in which such sanctions apply, and adds language which affirmatively trespasses suspended students from campus until such time that they are readmitted (Section .10)
- Clarifies the process for appealing decisions by Honor Code Officers and Honor Code Boards (Section .11)
- Removes the right to appeal to the Chancellor. The final decision on appeal is now made by the Provost. (Section .11(1)(e)3)
- Adds language explaining how records of Honor Code violations are maintained and when they are subject to disposal (Section .12)

**(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;

The University of Tennessee Board of Trustees urges adoption. The UTC Division of Student Affairs, Division of Academic Affairs, student body, and faculty are the UTC constituencies most directly affected by this rule. The Division of Student Affairs (through the Office of Student Conduct and Dean of Students Office), the Division of Academic Affairs (through the Office of the Provost), and the faculty are jointly responsible for the administration of honor code matters at UTC. The Division of Student Affairs and Division of Academic Affairs are supportive of this rule. The UTC Faculty Senate represents the entire faculty body and is supportive of this rule. The UTC Student Government Association and UTC Graduate Student Association together represent the entire student body and are supportive of this rule. The University of Tennessee Board of Trustees did not receive any requests to address the Board about 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 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;

Matthew Scoggins, General Counsel

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

Matthew Scoggins, 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

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: 09-32-19  
Rule ID(s): 9249  
File Date: 9/30/19  
Effective Date: 12/29/19

**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>	University of Tennessee
<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

**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
1720-02-01	Honor System
Rule Number	Rule Title
1720-02-01-.01	Purpose
1720-02-01-.02	Jurisdiction
1720-02-01-.03	Student Rights
1720-02-01-.04	Duties and Powers
1720-02-01-.05	Composition of the Honor Court
1720-02-01-.06	Procedures of the Honor Court
1720-02-01-.07	Failure to Appear
1720-02-01-.08	Honor Court Penalties
1720-02-01-.09	Appeals
1720-02-01-.10	Plagiarism

**RULES OF  
THE UNIVERSITY OF TENNESSEE AT CHATTANOOGA**

**CHAPTER 1720-02-01  
HONOR CODE**

**TABLE OF CONTENTS**

<u>1720-02-01-.01</u>	<u>Purpose</u>	<u>1720-02-01-.07</u>	<u>Honor Code Process – Methods of Resolution</u>
<u>1720-02-01-.02</u>	<u>Definitions</u>	<u>1720-02-01-.08</u>	<u>Honor Code Officer Hearings</u>
<u>1720-02-01-.03</u>	<u>Jurisdiction and Application</u>	<u>1720-02-01-.09</u>	<u>Honor Code Board Hearings</u>
<u>1720-02-01-.04</u>	<u>Honor Code Standards</u>	<u>1720-02-01-.10</u>	<u>Disciplinary Sanctions</u>
<u>1720-02-01-.05</u>	<u>Due Process Rights</u>	<u>1720-02-01-.11</u>	<u>Appeals</u>
<u>1720-02-01-.06</u>	<u>Honor Code Process – Initial and Pre-Resolution Stages</u>	<u>1720-02-01-.12</u>	<u>Records of Honor Code Violations</u>

**1720-02-01-.01 PURPOSE.**

(1) Preamble. The Honor Code of the University of Tennessee at Chattanooga ("University") is designed to foster and develop a climate of honesty and integrity by giving students a primary responsibility for upholding the standards under the Honor Code. The Honor Code is based upon the assumption that each student recognizes the fundamental importance of honesty. Students are responsible for conducting themselves in accordance with the rules and regulations of the Honor Code, and insuring that other members of the University community uphold the standards as well.

(2) Honor Code Pledge.

(a) The University's Honor Code Pledge states: "As a student of the University of Tennessee at Chattanooga, I pledge that I will not give or receive any unauthorized assistance with academic work or engage in any academic dishonesty in order to gain an academic advantage. I will exert every effort to insure that the Honor Code is upheld by myself and others, affirming my commitment to a campus-wide climate of honesty and integrity."

(b) By matriculating as a student at the University, a University student indicates his/her affirmation of the Honor Code Pledge, including the obligation to comply with the Honor Code.

Authority: T.C.A. § 49-9-209(e) and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

**1720-02-01-.02 DEFINITIONS.**

When used in this Chapter, the following words, terms, or phrases shall have the following meanings:

(1) Academic dishonesty: Any act of cheating, plagiarism, or other type of academic misconduct.

(2) Advisor: A person who provides assistance to a Complainant or Respondent during the Honor Code process, as provided under Section .05(3) of this Chapter.

(3) Business day: An official workday during which the University conducts business. Typically, a business day is a weekday (Monday through Friday), excluding any weekdays designated by the University as a holiday or in which the University is administratively closed. Each business day commences at 8:00 a.m. and ends at 5:00 p.m.

(4) Chancellor: The University's chief executive officer to whom the President of the University of Tennessee system has delegated primary responsibility for administration of University operations, policies, and procedures.

- (5) Complainant: Any member of the University community, including, without limitation, any University employee, student, organization, academic department, academic program, college, or unit, that reports an alleged violation of the Honor Code.
- (6) Designee: A University official or office designated with the authority to carry out a duty or role on behalf of another University official or office.
- (7) Faculty: A University employee who holds faculty rank and whose primary appointment is to engage in academic instruction, research, or service.
- (8) Faculty Senate: The representative body of the University's faculty composed of elected faculty representatives as well as administrators with *ex officio* status.
- (9) Faculty Senate President: The executive officer of the Faculty Senate elected from the faculty membership of the Faculty Senate.
- (10) Faculty Senate Executive Committee: A standing committee of the Faculty Senate composed of the faculty executive officers of the Faculty Senate.
- (11) Formal Hearing: A University hearing before a fair and impartial decision-maker in which a Respondent may contest charges of Honor Code violations and/or disciplinary sanctions issued against the Respondent, as provided under Section .07(1) of this Chapter.
- (12) Honor Code: The Honor Code of the University of Tennessee at Chattanooga and its related standards, processes and procedures, as set forth in this Chapter.
- (13) Honor Code Board: A hearing board consisting of students and faculty which serves as the decision-maker in an Honor Code Board Hearing, as provided under Section .09 of this Chapter.
- (14) Honor Code Board Hearing: A type of Formal Hearing in which an Honor Code Board serves as the decision-maker, as provided under Section .09 of this Chapter.
- (15) Honor Code Officer: A faculty member, appointed by the Faculty Senate, who serves on the Honor Code Board and is responsible for conducting an Honor Code Officer Hearing, as provided under Section .08 of this Chapter.
- (16) Honor Code Officer Hearing: A type of Formal Hearing in which an Honor Code Officer serves as the decision-maker, as provided under Section .08 of this Chapter.
- (17) Honor Code process: The processes and procedures as set forth in rules within this Chapter for resolving alleged violations of the Honor Code.
- (18) Member of the University community: Any person who is a student, faculty member, staff employee, campus visitor, or participant in a University-sponsored or University-affiliated activity, or any organization that participates in a University-sponsored or University-affiliated activity.
- (19) Notice: Notice given in writing and transmitted by one (1) or more of the following: (i) e-mail to a student's University-issued e-mail account; (ii) United States mail, (iii) courier service, and/or (iv) hand-delivery to the address the University's Records Office has on file for the student. When a notice is transmitted by e-mail, the notice is effective on the date the e-mail is sent. E-mail to a student's University-issued e-mail address is an official method of communication used by the University. 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.
- (20) Office of the Dean of Students: The University office designated with primary responsibility for the administration of the Office of Student Conduct. The Office of the Dean of Students may act as or on behalf of the Office of Student Conduct.

- (21) Office of Student Conduct: The University office designated with responsibility for administering the Honor Code-related rules, processes, procedures, training, and education.
- (22) Provost: The University's chief academic officer and the University official to whom the Chancellor has delegated primary responsibility for the administration and enforcement of the Honor Code.
- (23) Relevant information: Information having any tendency to make the existence of any fact that is of consequence to determining whether a Respondent violated the Honor Code more probable or less probable than it would be without the information.
- (24) Respondent: A student who has been accused of violating the Honor Code.
- (25) Staff: Any full-time or part-time University employee not primarily engaged in academic instruction, research, or service who holds either an exempt or non-exempt position with or without administrative, executive, or managerial responsibilities, excluding student employees of the University.
- (26) Student: A person who:
- (a) Is admitted, enrolled or registered for study at the University, either full-time or part-time, pursuing undergraduate, graduate, professional, and/or non-degree courses; or
  - (b) Has completed a preceding academic term at the University and is eligible for re-enrollment without re-applying for admission and/or otherwise has a continuing relationship with the University; or
  - (c) Attended the University during a previous academic term and engaged in academic misconduct during his or her time of enrollment; or
  - (d) Is admitted to the University and later matriculated at the University, and committed academic misconduct during the application process or during the period of time between admission and matriculation at the University.
- (27) Student Code of Conduct: The Student Code of Conduct of the University of Tennessee at Chattanooga, as set forth under Chapter 1720-02-05.
- (28) Student conduct record: The collective printed or electronic record of any cases involving alleged violations of the Student Code of Conduct by a student, including violations of the Honor Code. A student conduct record may include, without limitation, incident report(s), correspondence, investigation report(s), interview records, demographic information, evidence, hearing records and recordings, and the student's conduct history.
- (29) UAPA: The Uniform Administrative Procedures Act, Tenn. Code Ann. § 4-5-101 et seq.
- (30) UAPA Administrative Judge: A hearing officer who presides over and serves as the decision-maker in a UAPA hearing.
- (31) UAPA Hearing: A type of Formal Hearing conducted by a UAPA Administrative Judge in accordance with Chapter 1720-01-05 and the UAPA.
- (32) University: The University of Tennessee at Chattanooga.
- (33) University-affiliated activity: Any activity, on or off University-controlled property, that is initiated, aided, authorized, sponsored, or supervised by the University.
- (34) University official: A University employee when acting in the course and scope of his or her employment duties.
- (35) Vice Chancellor for Student Affairs: The University's chief student affairs officer to whom the Chancellor has delegated primary authority and responsibility for the administration of the Student Code of Conduct.

**1720-02-01-.03 JURISDICTION AND APPLICATION.**

- (1) Jurisdiction. The Honor Code applies to every student of the University, without regard to the student's academic program, standing, location, or type of activity. The Honor Code applies to a student's conduct relating to any University-affiliated activity, regardless of the location of the University-affiliated activity, including, without limitation, an overseas study program, clinical/field placement, internship, or in-service experience.
- (2) Time Period of Application to Students. The Honor Code applies to the conduct of a student from the time of the student's application for admission to the University through the entire time that the student is a candidate for and/or is awarded a degree from the University (even if a student's conduct which violates the Honor Code is not discovered by the University until after the University awards a degree to the student). The Honor Code applies to a student's conduct that occurs during the academic year, between semesters, and during periods between terms of actual enrollment at the University.
- (3) Withdrawal with Pending Allegations. If a student withdraws from the University while allegations of Honor Code violations are pending against the student, the University retains the right to investigate and resolve the allegations before the University may allow the student to re-enroll at the University, and the student's academic record and/or ability to register for classes may be encumbered until such time that the allegations are resolved.
- (4) Concurrent Non-Honor Code Violations of the Student Code of Conduct. In cases involving allegations of both Honor Code violations and non-Honor Code violations of the Student Code of Conduct, the alleged Honor Code violations will be resolved in accordance with the Honor Code procedures under this Chapter separately from resolution of the alleged non-Honor Code violations, which will be resolved pursuant to the procedures under Chapter 1720-02-05. In such cases, disciplinary sanctions may be issued against the Respondent for any Honor Code violations separate from and additional to disciplinary sanctions issued for any non-Honor Code violations of the Student Code of Conduct.
- (5) Violations of Professional Standards or Ethics. Graduate or professional programs within the University may take separate and independent action against students for alleged violations of professional and/or ethical standards using procedures other than those contained in the Honor Code.
- (6) Effect on Coursework. Coursework by a Respondent involving an alleged Honor Code violation and, if applicable, the Respondent's final grade for the course, will be recorded as incomplete during the pendency of the resolution of the alleged violation under the Honor Code process. All other coursework performed by the Respondent during the Honor Code process will be considered conditional. Credit for the Respondent's coursework involving the alleged Honor Code violation or performed during the pendency of the Honor Code process may be affected, delayed, denied, and/or revoked based on a finding of an Honor Code violation and/or a disciplinary sanctions imposed against the Respondent under the Honor Code. In addition, subject to the other provisions of the Honor Code, a delay in the granting of a degree or diploma may be imposed, or a degree that is awarded prior to a decision under the Honor Code may be revoked.
- (7) Withdrawal During the Honor Code Process. If a Respondent voluntarily withdraws from the University before the conclusion of the Honor Code process, the University retains the right to investigate and resolve the allegations against the Respondent as a condition of the Respondent being allowed to re-enroll in the University. A Disciplinary Hold on the Respondent's record, as provided under Section .13(2) of Chapter 1720-02-05, may be implemented or remain in place after the Respondent withdraws in order to enforce this Section .03(8).
- (8) Time Extensions and Rescheduling. Any time period specified under the Honor Code may be extended for good cause at the discretion of the Office of Student Conduct. Any hearing or meeting described in the Honor Code may be rescheduled for good cause at the discretion of the Office of

## Student Conduct.

Authority: T.C.A. § 49-9-209(e) and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

### **1720-02-01-.04 HONOR CODE STANDARDS.**

All students are prohibited from engaging in the following acts of academic dishonesty:

- (1) Cheating: A form of academic dishonesty in which there is an intent to deceive and in which the use of unauthorized materials or assistance is exploited. Examples of cheating include, without limitation: (i) copying another's work; (ii) obtaining or giving unauthorized assistance on exams, papers, or other coursework; (iii) unauthorized collaboration or collusion with another person on an examination or academic assignment; (iv) having another person take an exam for the student by proxy; and (v) the use of unauthorized materials or devices, including, but not limited to, computers, calculators, cell phones, cheat sheets, or other resources not allowed by the course instructor.
- (2) Plagiarism: The use of intellectual property or work product of another without giving proper credit. Examples of plagiarism include, without limitation: (i) using written or spoken words, phrases, or sentences from any source without proper attribution or citation; (ii) summarizing ideas from another source without proper attribution or citation, unless such information is recognized as common knowledge; (iii) using facts, statistics, graphs, pictorial representations, or phrases in one's work without acknowledgment or proper attribution of the source of such information, unless such information is recognized as common knowledge; (iv) submitting work as one's own that is either in whole or in part created by a professional service; and (v) using previously submitted academic work by the student for any assignment without the permission of the course instructor.
- (3) Falsification, Fabrication, or Misrepresentation: Falsifying, fabricating, or misrepresenting data, laboratory results, research results, citations, or other information in connection with an academic assignment, or altering grades, answers, or marks in an effort to change the earned grade or credit.
- (4) Use of Unauthorized Materials: Providing, bringing, receiving, and/or using unauthorized material during an examination or for any academic assignment.
- (5) Use of Unauthorized Assistance: Providing, bringing, receiving, and/or using unauthorized assistance during an examination, laboratory work, field work, scholarship, or other academic assignment, or collaborating with another on a graded assignment without the instructor's approval.
- (6) Gaining Unfair Advantage: Gaining an objectively unfair academic advantage by failing to observe the expressed procedures or instructions relating to an exam or academic assignment.
- (7) Causing Unfair Disadvantage: Engaging in any conduct that unfairly places another student at a disadvantage, including, but not limited to, taking, hiding, or altering resource material or manipulating a grading system.
- (8) Attempting or Assisting a Violation: Attempting to commit a violation of the Honor Code or assisting others to commit a violation of the Honor Code.

Authority: T.C.A. § 49-9-209(e) and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

### **1720-02-01-.05 DUE PROCESS RIGHTS.**

- (1) Rights of the Respondent.

A Respondent will have the following rights during the Honor Code process:

- (a) The right to a prompt, thorough, and equitable investigation.

- (b) The right to be informed of all charges in writing.
- (c) The right to ask questions and receive information about the case, including, without limitation, the status of an investigation.
- (d) The right to remain silent in any investigation, meeting, or hearing.
- (e) The right to a fair and equitable hearing.
- (f) The right to receive notice of hearings at which the Respondent may be present.
- (g) The right to access any information or documents that will be used during a hearing, unless prohibited by law.
- (h) The right to challenge, for good cause, the fairness and/or impartiality of any Honor Code Officer, Honor Code Board Chairperson, Honor Code Board member, or UAPA Administrative Judge. The Provost (or his or her designee) will decide on challenges to Honor Code Officers or Honor Code Board Chairpersons. The Honor Code Board Chairperson will decide on challenges to Honor Code Board members. Challenges to UAPA Administrative Judges will be decided according to the UAPA hearing procedures under Chapter 1720-01-05.
- (i) The right to challenge all charges and testimony presented; to present witnesses and other evidence; and to challenge the admissibility of evidence.
- (j) The right not to be questioned directly by the Complainant during a hearing.
- (k) The right to be informed in writing of the decision of the decision-maker in a case, and if applicable, the proper procedure for appealing the decision.
- (l) The right to appeal the decision of the decision-maker in an Honor Code Officer Hearing, Honor Code Board Hearing, or UAPA Hearing.
- (m) The right to be assisted by an advisor during all stages of the Honor Code process in accordance with Section .05(3) of this Chapter.

(2) Rights of the Complainant.

A Complainant will have the following rights during the Honor Code process:

- (a) The right to a prompt, thorough, and equitable investigation.
- (b) The right to ask questions and receive information about the case, including, without limitation, the status of an investigation.
- (c) The right to remain silent in any investigation, meeting, or hearing.
- (d) The right to receive notice of any hearings at which the Complainant may be present.
- (e) The right to access any information or documents that may be used during a hearing, unless prohibited by law.
- (f) The right to challenge, for good cause, the fairness and/or impartiality of any Honor Code Officer, Honor Code Board Chairperson, Honor Code Board member, or UAPA Administrative Judge. The Provost (or his or her designee) will decide on challenges to Honor Code Officers or Honor Code Board Chairpersons. The Honor Code Board Chairperson will decide on challenges to Honor Code Board members. Challenges to UAPA Administrative Judges will be decided according to the UAPA hearing procedures under Chapter 1720-01-05.

- (g) The right to challenge all testimony presented; to present witnesses and other evidence; and to challenge the admissibility of evidence.
  - (h) The right not to be questioned directly by the Respondent during a hearing.
  - (i) The right to be informed in writing of the decision of the decision-maker in a case, and if applicable, the proper procedure for appealing the decision.
  - (j) The right to appeal the decision of the decision-maker in an Honor Code Officer Hearing, Honor Code Board Hearing, or UAPA Hearing.
  - (k) The right to be assisted by an advisor during all stages of the Honor Code process in accordance with Section .05(3) of this Chapter.
- (3) Right to an Advisor.
- (a) The Complainant and the Respondent each may choose to be assisted by one (1) advisor during all stages of the Honor Code process.
  - (b) A student Complainant or a Respondent who chooses to be assisted by an advisor is encouraged to consider selecting a University employee who has received training about the Honor Code process from the Office of Student Conduct. A student Complainant and the Respondent may obtain the names of trained advisors from the Office of Student Conduct. At their own expense, a student Complainant and the Respondent may choose a person who is not employed by the University to serve as an advisor. A student 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, as delays will generally not be granted due to the scheduling conflicts of an advisor.
  - (c) A faculty or staff member Complainant who chooses to be assisted by an advisor is encouraged to consider selecting a supervisor as his or her advisor.
  - (d) The role of an advisor is limited to assisting, advising, and/or supporting a Complainant or Respondent during the Honor Code 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 Honor Code process, including, without limitation, an Honor Code Officer Hearing or Honor Code Board Hearing. However, in a UAPA Hearing, the Complainant and the Respondent are entitled to be represented by legal counsel at their own expense.

Authority: T.C.A. § 49-9-209(e) and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

**1720-02-01-.06 HONOR CODE PROCESS – INITIAL AND PRE-RESOLUTION STAGES.**

- (1) Initiation of the Honor Code Process.
  - (a) The University may initiate the Honor Code process on the basis of written allegations received from a Complainant. The University may also initiate the Honor Code process in the absence of written allegations if the University becomes aware, through other means, of potential Honor Code violations committed by a student.
  - (b) Upon receipt of written allegations or other information concerning potential Honor Code violations, the Office of Student Conduct (or designee), on behalf of the University, will review the information and initiate the Honor Code process by scheduling a Preliminary Meeting with the Respondent as provided under Section .06(3) of this Chapter.

(2) Notice of Allegations.

- (a) If the Office of Student Conduct (or designee) determines to initiate the Honor Code process, it will provide a Notice of Allegations to the Respondent.
- (b) The Notice of Allegations will:
1. Inform the Respondent that the University has received allegations that the Respondent has violated the Honor Code and that the University has begun or will begin an investigation of the alleged violations;
  2. Provide a brief description of the alleged Honor Code violation(s);
  3. Notify the Respondent of his or her right to be assisted and/or supported by an advisor at all stages of the Honor Code process;
  4. Either notify the Respondent of the date, time, and location of the Preliminary Meeting, or instruct the Respondent to contact the Office of Student Conduct (or designee) within five (5) business days of the effective date of the notice to schedule a Preliminary Meeting;
  5. Inform the Respondent of the consequences for failure to schedule or appear at a Preliminary Meeting, as provided under Section .06(3)(a) of this Chapter; and
  6. Provide the website address where the Respondent can review a copy of the Honor Code and instruct the Respondent to review the Honor Code rules for information about the Honor Code process.

(3) Preliminary Meeting.

After a Notice of Allegations is issued to a Respondent, the Office of Student Conduct (or designee) will hold a Preliminary Meeting with the Respondent in accordance with Section .06(3)(b) of this Chapter, unless the Respondent fails to schedule a Preliminary Meeting or fails to appear at a scheduled Preliminary Hearing as provided under Section .06(3)(a) of this Chapter.

- (a) Failure to Schedule or Appear at Preliminary Meeting. If the Respondent fails to contact the Office of Student Conduct (or designee) within five (5) business days of the effective date of the Notice of Allegations to schedule a Preliminary Meeting or fails to appear at a scheduled Preliminary Meeting, the Respondent waives his or her right to a Preliminary Meeting and the right to select the type of Formal Hearing for resolution of the allegations, unless the Respondent's failure to schedule or appear at a Preliminary Meeting is excused by the Office of Student Conduct upon a showing of good cause. If the Respondent waives his or her right to a Preliminary Hearing as provided under this Section .06(3)(a) and the Office of Student Conduct (or designee) determines that charges should be issued based on the information available, the Office of Student Conduct (or designee) will select the type of Formal Hearing for resolution of the charge(s) and provide the Respondent with a Notice of Charges in accordance with Section .06(5) of this Chapter. Notwithstanding any provisions to the contrary in this Section .06(3)(a), in cases in which the Respondent has the right to a UAPA Hearing, the Respondent waives his or her right to a UAPA Hearing only as provided under Section .07(1)(d) of this Chapter.
- (b) Appearance at Scheduled Preliminary Meeting. If the Respondent appears at a scheduled Preliminary Meeting, the Office of Student Conduct (or designee) will conduct a Preliminary Meeting with the Respondent in the following general manner:
1. The Office of Student Conduct (or designee) will inform the Respondent of the allegations against the Respondent, and if requested, provide the Respondent with a reasonable opportunity to review the written allegations.

2. The Office of Student Conduct (or designee) will provide the Respondent with an opportunity to respond to the allegations through various means, including, without limitation, the presentation of any information for consideration by the Office of Student Conduct (or designee) and/or the identification of any witnesses the Respondent believes have relevant information.
3. Both the Office of Student Conduct (or designee) and the Respondent may ask questions and seek clarifying information about the allegations, possible sanction(s), and the Honor Code process.
4. If, based on the available information provided by the Respondent, the Office of Student Conduct (or designee) determines that no additional investigation of the allegations is needed, the Office of Student Conduct (or designee) will inform the Respondent of the Formal Hearing options available for resolution of the allegations. The Respondent will then be provided with the opportunity to select the type of Formal Hearing through which to contest the allegations. Upon the Respondent's selection of the type of Formal Hearing, the Preliminary Meeting will be concluded, and the Office of Student Conduct (or designee) will provide the Respondent with a Notice of Charges in accordance with Section .06(5) of this Chapter.
5. If, based on the available information provided by the Respondent, the Office of Student Conduct (or designee) determines that additional investigation is needed, the Preliminary Meeting will be concluded, and the Office of Student Conduct (or designee) will continue its investigation in accordance with the applicable procedures under Section .06(4) of this Chapter.

(4) Investigations.

- (a) The Office of Student Conduct may delegate to and/or collaborate with the Office of Research Integrity or other designated University official on the investigation of alleged Honor Code violations.
- (b) Investigations will be conducted in a prompt, thorough, ethical, and equitable manner.
- (c) When conducting an investigation, the Office of Student Conduct (or other designated investigator) will act as a fair and impartial party rather than as a representative of the person, office, unit, or organization that submitted the allegations.
- (d) During an investigation, the Complainant(s), the Respondent(s), witnesses, or any other persons may be interviewed, and other relevant information and documentation will be obtained as applicable. The Office of Student Conduct (or other designated investigator) is not obligated to interview a witness identified by the Complainant or the Respondent if the Office of Student Conduct (or other designated investigator) believes the witness is not likely to possess relevant information, information from the witness is not likely to lead to the discovery of relevant information, or the information the witness is likely to possess is cumulative of other information already gathered. The Office of Student Conduct (or other designated investigator) may re-interview the Complainant(s), Respondent(s), witnesses, and/or any other person at any time during the investigation in order to obtain additional and/or clarifying information.

(5) Notice of Charges.

- (a) If the Office of Student Conduct (or designee) determines, either at the end of the Preliminary Meeting as provided under Section .06(3)(b) of this Chapter or at the conclusion of the investigation, that the Honor Code process should proceed with respect to the allegations, then the Office of Student Conduct (or designee) will provide the Respondent with a Notice of Charges.

(b) The Notice of Charges will include, without limitation, the following information:

1. A description of the conduct the Respondent is charged with committing, the specific Honor Code violation(s) charged against the Respondent, and the recommended disciplinary sanctions;
2. The types of Formal Hearings available for resolution of the charge(s);
3. That the Respondent must request one (1) of the available Formal Hearing options in writing within five (5) business days of the effective date of the Notice of Charges or otherwise waives the right to select the type of Formal Hearing for resolution of the charge(s); and
4. The Respondent's right to be assisted and/or supported by an advisor at all stages of the Honor Code process. In cases in which the UAPA requires the University to offer the Respondent a UAPA Hearing, the notice shall notify the Respondent of his or her right to be assisted or represented by legal counsel if the Respondent decides to contest the charge(s) through a UAPA Hearing.

Authority: T.C.A. § 49-9-209(e); T.C.A. § 4-5-101 et seq. and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

#### **1720-02-01-.07 HONOR CODE PROCESS – METHODS OF RESOLUTION.**

Charges or allegations of violations of the Honor Code may be resolved in one (1) of the following ways:

(1) Resolution by Formal Hearing. A Formal Hearing is a process for resolving charges of violations of the Honor Code in which the Respondent is provided the opportunity to contest the charges through the presentation of evidence at a hearing before a fair and impartial decision-maker.

(a) Types of Formal Hearings. Charges of violations of the Honor Code may be resolved through one (1) of three (3) types of Formal Hearings, depending on the gravity of the disciplinary sanctions proposed for the charge:

1. Honor Code Officer Hearing. A hearing held before an Honor Code Officer in accordance with Section .08 of this Chapter. An Honor Code Officer Hearing will be offered in every case, except where a faculty or staff member Complainant requests that an Honor Code Officer Hearing not be offered as a hearing option for resolution of the charges.
2. Honor Code Board Hearing. A hearing held before an Honor Code Board in accordance with Section .09 of this Chapter. An Honor Code Board Hearing will be offered in every case.
3. UAPA Hearing. A "contested case" hearing under the UAPA held before a UAPA Administrative Judge in accordance with Chapter 1720-01-05. A Respondent has the right to a UAPA Hearing only when the UAPA requires the University to offer a UAPA Hearing as determined by the gravity of the disciplinary sanction(s) proposed for the charge.

(b) Request for Type of Formal Hearing. Within five (5) business days of the effective date of the Notice of Charges, the Respondent must select in writing one (1) of the types of Formal Hearing available for resolution of the charge(s) using the form(s) provided by the Office of Student Conduct (or designee). A verbal request by the Respondent for a type of Formal Hearing will not constitute a valid request. By selecting a type of Formal Hearing, the Respondent waives the right to contest the charge(s) through another type of Formal Hearing.

- (c) Failure to Request Type of Formal Hearing. If, within five (5) business days of the effective date of the Notice of Charges, the Respondent fails to request in writing the type of Formal Hearing, the Respondent waives the right to select the type of Formal Hearing for resolution of the charge(s), unless the Respondent's failure to select the type of Formal Hearing is excused by the Office of Student Conduct upon a showing of good cause. If the Respondent waives his or her right to select the type of Formal Hearing as provided under this Section .07(1)(c), the Office of Student Conduct (or designee) will select the type of Formal Hearing and will provide notice to the Respondent of the type of Formal Hearing selected and the date, time, and place of the hearing.
- (d) Waiver of UAPA Hearing. Notwithstanding any provisions in this Chapter to the contrary, in a case in which the UAPA requires that the University offer the Respondent a UAPA Hearing, the Respondent waives his or her right to a UAPA Hearing only if the Respondent executes a voluntary written waiver of his or her right to a UAPA Hearing.
- (2) Resolution by Resolution Agreement. At any time during the Honor Code process, a faculty member Complainant may propose to the Respondent to resolve allegations or charges of Honor Code violations by Resolution Agreement in lieu of a Formal Hearing. A proposed Resolution Agreement must be reduced to writing by the faculty member Complainant using the form(s) provided by the Office of Student Conduct (or designee). The Respondent may accept the proposed resolution and sanctions (if applicable) by signing the proposed Resolution Agreement. The Resolution Agreement will become binding and effective after it is signed by the Respondent and the faculty member Complainant. The faculty member Complainant must send the fully-executed Resolution Agreement to the Office of Student Conduct (or designee) within five (5) business days after the agreement has been fully-executed.
- (a) By signing a Resolution Agreement, the Respondent: (i) accepts responsibility for the Honor Code violations stated in the agreement; (ii) agrees to the imposition of the disciplinary sanctions stated in the agreement (if applicable); and (iii) waives all rights the Respondent may have to resolve the allegations or charges through a Formal Hearing.
- (b) A Respondent may not revoke or appeal a Resolution Agreement at any time after the Respondent signs the agreement.

Authority: T.C.A. § 49-9-209(e); T.C.A. § 4-5-101 *et seq.* and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

### **1720-02-01-.08 HONOR CODE OFFICER HEARINGS.**

An Honor Code Officer Hearing is held before and conducted by an Honor Code Officer. The Honor Code Officer serves as the decision-maker in determining whether the Respondent is responsible for the charged Honor Code violation(s) and the disciplinary sanction(s), if any, to be imposed.

- (1) Honor Code Officer. An Honor Code Officer is a faculty member selected by the Faculty Senate to serve on the Honor Code Board. Honor Code Officers are trained by the Office of Student Conduct to conduct Honor Code Officer Hearings in accordance with the Honor Code.
- (2) Fairness & Impartiality. The Honor Code Officer will be fair and impartial. Any party to an Honor Code Officer Hearing has the right to challenge the fairness or impartiality of the Honor Code Officer. Any Honor Code Officer lacking fairness or impartiality will recuse himself or herself or may, for good cause and at the discretion of the Provost (or his or her designee) or the Faculty Senate President (or his or her designee), be removed from serving as Honor Code Officer for the hearing.
- (3) Notice. If an Honor Code Officer Hearing is selected for resolution of the charge(s), the Honor Code Officer will send the Respondent and the Complainant notice of the time, place, and date of the hearing at least five (5) business days in advance of the date of the hearing.

- (4) Hearing Procedure. An Honor Code Officer will conduct an Honor Code Officer Hearing in accordance with the following general procedures and rules:
- (a) The hearing will be closed to the public.
  - (b) The Honor Code Officer will determine all procedural questions. The Honor Code Officer may be assisted by a procedural advisor appointed by the Office of Student Conduct.
  - (c) Each Respondent and Complainant will be considered a party to the proceeding.
  - (d) Each party and his or her advisor (if any) will be allowed to attend the portion of the hearing during which questioning is conducted and information is received by the Honor Code Officer.
  - (e) Each party will be afforded a full and fair opportunity to present all evidence, including witness testimony, that reasonably relates to the charge or action at issue.
  - (f) The Honor Code Officer may limit the presentation of evidence which is irrelevant or unreasonably repetitious or voluminous.
  - (g) The Honor Code Officer will consider all evidence presented and give due consideration to the credibility or weight of the information presented. Technical rules of evidence, such as evidentiary rules applicable to civil or criminal court proceedings, will not apply.
  - (h) The Honor Code Officer will apply the preponderance of the evidence standard in determining whether or not the Respondent is responsible for the charged Honor Code violations.
  - (i) An appropriate record of the hearing proceedings will be made. An audio or video record may be made of the hearing. Defects in the record will not invalidate the proceedings.
  - (j) Following the conclusion of the hearing, the Honor Code Officer will provide each party with a Notice of Decision setting forth the Honor Code Officer's decision on responsibility and, if applicable, the disciplinary sanctions to be issued against the Respondent and their effective date.
- (5) Multiple Respondents. In cases involving more than one (1) Respondent, the Honor Code Officer has the discretion to hold one (1) hearing for all of the Respondents or separate hearings for each Respondent. Any Respondent may, prior to the hearing, request that his or her hearing be conducted separately from the other Respondent(s). Such a request must be made in writing to the Honor Code Officer using the form(s) provided by the University. The Honor Code Officer will decide whether or not to grant such a request, and the Honor Code Officer's decision will be final.
- (6) Failure to Appear. If proper notice of the Honor Code Officer Hearing is provided to the Respondent in accordance with Section .08(3) of this Chapter but the Respondent fails to appear at the hearing, the Honor Code Officer has the discretion to hold the hearing in the party's absence or to reschedule the hearing. If the Honor Code Officer holds the hearing in a party's absence, the absent party will be subject to any decision(s) made by the Honor Code Officer, including any decision to issue disciplinary sanction(s) against the Respondent. Notwithstanding the foregoing provisions of this Section .08(6), the Honor Code Officer may decline to issue a Notice of Decision following the conclusion of the hearing and schedule a new hearing upon a showing of good cause by the absent party for his or her failure to appear.
- (7) Appeal. The decision of the Honor Code Officer may be appealed to the Provost (or his or her designee) in accordance with Section .11 of this Chapter.

Authority: T.C.A. § 49-9-209(e) and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

**1720-02-01-.09 HONOR CODE BOARD HEARINGS.**

An Honor Code Board Hearing is held before a panel of Honor Code Board members and chaired by an Honor Code Board Chairperson. The Honor Code Board members serve as the decision-makers in determining whether the Respondent is responsible for the charged Honor Code violation(s) and the disciplinary sanction(s), if any, to be imposed.

- (1) Honor Code Board Chairperson. The Honor Code Board Chairperson is a faculty member appointed by the Faculty Senate to preside over and facilitate an Honor Code Board Hearing to ensure that the hearing is conducted in accordance with the Honor Code. Except as provided under Section .09(7)(j) of this Chapter, the Honor Code Board Chairperson will not vote on the issues to be decided by the Honor Code Board. The Honor Code Board Chairperson will be trained by the Office of Student Conduct on the procedures for conducting an Honor Code Board Hearing in accordance with the Honor Code. In the event the Honor Code Board Chairperson is absent or recused from a case, a faculty member on the Honor Code Board may serve as the acting Honor Code Board Chairperson for the case.
- (2) Honor Code Board. The Honor Code Board is a panel of appointed students and faculty who are selected to serve as the decision-makers in an Honor Code Board Hearing.

  - (a) The full membership of the Honor Code Board consists of: (i) six (6) undergraduate students recommended by the Student Government Association and appointed by the Office of Student Conduct; (ii) six (6) graduate students recommended by the Graduate Student Association and appointed by the Office of Student Conduct; (iii) six (6) undergraduate-level faculty members appointed by the Faculty Senate; and (iv) six (6) graduate-level faculty members appointed by the Faculty Senate.
  - (b) For each Honor Code Board Hearing, (i) a minimum of six (6) Honor Code Board members is required to hear the case (excluding the Honor Code Board Chairperson); and (ii) the Honor Code Board hearing the case must consist of at least three (3) student members and at least three (3) faculty members who correspond to the academic level of the Respondent (e.g., for a case involving a Respondent who is an undergraduate student, the Honor Code Board hearing the case must consist of at least three (3) undergraduate students and at least three (3) undergraduate-level faculty members). Notwithstanding any provisions of this Section .09(2)(b) to the contrary, with the consent of the Complainant, Respondent and Honor Code Board Chairperson, an Honor Code Board hearing a case may consist of less than six (6) Honor Code Board members or be composed of less than three (3) student members and/or three (3) faculty members who correspond to the academic level of the Respondent.
- (3) Fairness & Impartiality. The Honor Code Board members and the Honor Code Board Chairperson will be fair and impartial. Any party to an Honor Code Board Hearing will have the right to challenge the fairness or impartiality of the Honor Code Board Chairperson or any Honor Code Board member hearing the case. Any Honor Code Board member hearing the case who lacks fairness or impartiality will recuse himself or herself, or for good cause and at the Honor Code Board Chairperson's discretion, be removed from hearing the case. Any Honor Code Board Chairperson lacking fairness or impartiality will recuse himself or herself, or for good cause and at the discretion of the Provost (or his or her designee), be removed from presiding over the hearing.
- (4) Notice. If an Honor Code Board Hearing is selected for resolution of the charge(s), the Office of Student Conduct will send the Respondent and the Complainant notice of the time, place, and date of the hearing at least five (5) business days in advance of the date of the hearing.
- (5) Pre-Hearing Submissions from Parties. At least five (5) business days in advance of the date of the hearing, the Respondent and the Complainant must provide the following information to the Office of Student Conduct:

  - (a) The names of all witnesses the party plans to present at the hearing and a brief summary of the information that the party reasonably anticipates each witness to provide.

- (b) A copy of all tangible or electronic information that the party plans to present at the hearing (including, but not limited to, witness statements, video or audio recordings, photographs, e-mails, text messages, telephone records, medical bills, demonstrative exhibits, etc.). The party may provide photographs of items of evidence that cannot be produced in a copy form.
- (c) A copy of a written statement, if any, that the party wants the Honor Code Board members to consider. A Complainant's statement may include recommended sanctions for the Respondent's alleged Honor Code violation(s). The Respondent's statement may include a description of any factors the Respondent believes mitigate the alleged Honor Code violation(s) or proposed disciplinary sanction(s).
- (6) Pre-Hearing Review of Information. After notice of the Student Conduct Board Hearing is provided to the Respondent and Complainant in accordance with Section .09(4) of this Chapter, the Office of Student Conduct will make available to each party the materials submitted by each party and the University upon the request of a party. Notwithstanding any provision to the contrary in this Section .09(6), no less than one (1) business day prior to the hearing, the Office of Student Conduct will make the materials submitted by each party and the University available for review by each party and their respective advisors, the Honor Code Board Chairperson, and the Honor Code Board members hearing the case. The Office of Student Conduct will notify each party, the Honor Code Board Chairperson, and the Honor Code Board members hearing the case when the materials are ready for review in the Office of Student Conduct or when the materials will be sent to them electronically. The Office of Student Conduct may redact irrelevant and/or protected information from any materials made available for review.
- (7) Hearing Procedure. The Honor Code Board Chairperson will conduct an Honor Code Board Hearing in accordance with the following general procedures and rules:
  - (a) The hearing will be closed to the public.
  - (b) The Honor Code Board Chairperson will determine all procedural questions. The Honor Code Board Chairperson may be assisted by a procedural advisor appointed by the Office of Student Conduct.
  - (c) Each Respondent and Complainant will be considered a party to the proceeding.
  - (d) Each party and their respective advisors will be allowed to attend the portion of the hearing during which questioning is conducted and information is received by the Honor Code Board members. The parties (and their advisors) will not be allowed to attend the portion of the hearing during which deliberations by the Honor Code Board members occur.
  - (e) Each party will be afforded a full and fair opportunity to present an opening statement, any evidence, including witness testimony, that reasonably relates to the charge or action at issue, and a closing statement.
  - (f) The Honor Code Board Chairperson may bar or limit the presentation of evidence which is not provided to the Office of Student Conduct in advance of the hearing in accordance with Section .09(5) of this Chapter, or which (i) is irrelevant, (ii) unreasonably repetitious or voluminous, or (iii) protected from disclosure under federal, state, or local law.
  - (g) The Honor Code Board members will consider all evidence presented and give due consideration to the credibility or weight of the information presented. Technical rules of evidence, such as evidentiary rules applicable to civil or criminal court proceedings, will not apply.
  - (h) The Honor Code Board members will apply the preponderance of the evidence standard in determining whether or not the Respondent is responsible for the charged Honor Code violation(s).

- (i) An appropriate record of the hearing proceedings will be made. An audio or video record will be made of the hearing, except for the portion of the hearing in which the Honor Code Board members deliberate and vote on their decision. Defects in the record will not invalidate the proceedings.
  - (j) After all information for consideration has been presented to the Honor Code Board members, the parties (and their advisors, if any) will be excused, and the Honor Code Board members will deliberate and vote on the following issues: (i) whether the Respondent is responsible for the charged Honor Code violation(s) and (ii) the disciplinary sanctions, if any, to be issued. The decision of the Honor Code Board members on each issue will be made by simple majority of the voting members' votes. In the event of a tie-vote among the voting members, the Honor Code Board Chairperson will cast the tie-breaking vote.
  - (k) At the conclusion of the hearing, the Honor Code Board Chairperson will provide each party with a Notice of Decision setting forth the decision of the Honor Code Board members on responsibility and, if applicable, the disciplinary sanctions to be issued against the Respondent and their effective date.
- (8) Multiple Respondents. In cases involving more than one (1) Respondent, the Honor Code Board Chairperson has the discretion to hold one (1) hearing for all of the Respondents or separate hearings for each Respondent. Any Respondent may, prior to the hearing, request that his or her hearing be conducted separately from the other Respondents' hearings. Such a request must be made in writing to the Honor Code Board Chairperson using the form(s) provided by the University. The Honor Code Board Chairperson will decide whether or not to grant such a request, and the Honor Code Board Chairperson's decision will be final.
- (9) Failure to Appear. If proper notice of the Honor Code Board Hearing is provided to a party in accordance with Section .09(4) of this Chapter but the party fails to appear at the hearing, the Honor Code Board Chairperson has the discretion to hold the hearing in the party's absence or to reschedule the hearing. If the Honor Code Board Chairperson holds the hearing in a party's absence, the absent party will be subject to any decision(s) made by the Honor Code Board members, including any decision to issue disciplinary sanction(s) against the Respondent. Notwithstanding the foregoing provisions of this Section .09(8), the Honor Code Board Chairperson may decline to issue a Notice of Decision following the conclusion of the hearing and schedule a new hearing upon a showing of good cause by the absent party for his or her failure to appear.
- (10) Appeal. The decision of the Honor Code Board members may be appealed to the Provost (or his or her designee) in accordance with Section .11 of this Chapter.

Authority: T.C.A. § 49-9-209(e) and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

#### **1720-02-01-.10 DISCIPLINARY SANCTIONS.**

- (1) Disciplinary sanctions are primarily intended to: (i) educate Respondents about appropriate behavior; (ii) encourage Respondents to take responsibility for Honor Code violation(s); (iii) encourage and promote the personal and professional development of Respondents; (iv) discourage other students from violating the Honor Code; and/or (v) protect the academic reputation of the University.
- (2) The disciplinary sanctions imposed on a Respondent should be appropriate for the particular case based on the gravity of the Honor Code violation, including, without limitation, how the violation affected or reasonably could have affected the academic reputation of the University and members of the University community. Consideration also may be given to other aggravating or mitigating factors, including, without limitation: (i) the Respondent's student conduct record; (ii) the Respondent's academic record; (iii) the Respondent's responsiveness to the Honor Code process; and (iv) the Respondent's academic classification.

- (3) A Respondent who accepts responsibility for an Honor Code violation pursuant to a Resolution Agreement may be subject only to a grade modification as provided under Section .10(4)(a) of this Chapter. No other disciplinary sanction may be imposed upon a Respondent pursuant to a Resolution Agreement. A Respondent who is found responsible for an Honor Code violation by the decision-maker in a Formal Hearing may be subject to one (1) or more disciplinary sanctions provided under Section .10(4) of this Chapter.
- (4) The following sanctions may be imposed on a student found to have violated the Honor Code:
- (a) Grade Modification.
1. Assignments. The University may impose a grade modification for an academic assignment if the Respondent is found to have violated the Honor Code in connection with performing or completing the assignment, including, without limitation, by providing another student with unauthorized assistance with the assignment.
  2. Examinations. The University may impose a grade modification for an examination if the Respondent is found to have violated the Honor Code in connection with taking or completing the examination, including, without limitation, by providing another student with unauthorized assistance on the examination.
  3. Courses. The University may impose a grade modification in a course if the Respondent is found to have violated the Honor Code in connection with taking or completing the course, including, without limitation, by providing another student unauthorized assistance with taking or completing the course.
- (b) Disciplinary Reprimand. A disciplinary reprimand is a written warning that informs a Respondent that the Respondent is violating or has violated the Honor Code and must cease and desist from engaging in the Honor Code violation and/or prevent the Honor Code violation from occurring again. A disciplinary reprimand will also inform the Respondent that any further violations of the Honor Code may result in the imposition of more severe sanctions.
- (c) Disciplinary Probation. A Respondent may be placed on disciplinary probation for serious or moderate Honor Code violations or in the case of multiple or repeated minor Honor Code violations. A Respondent may be placed on disciplinary probation for a definite or indefinite period of time, during which time the Respondent may continue to be enrolled at the University. While the Respondent is on disciplinary probation, conditions may be placed on the Respondent's continued enrollment at the University, and University departments, programs, and/or services may limit or prohibit participation in certain activities. If a Respondent commits any further Honor Code violations while on disciplinary probation, the Respondent may be subject to more severe sanctions up to and including permanent dismissal.
- (d) Educational Sanction. A Respondent may be required to complete an educational assignment or program. Educational assignments and programs are designed to educate the Respondent about why certain conduct is inappropriate. Examples of educational assignments include, without limitation: (i) writing a reflection and/or research paper on a designated topic; (ii) completing a research project on a designated topic; (iii) giving a presentation on a designated topic; and (iv) issuing a formal apology in writing and/or in person. An educational program may include, without limitation, attending and satisfactorily completing an in-person or distance learning course, training, or workshop on alcohol or drug use, civility, ethics, or other topics deemed appropriate by the Office of Student Conduct. The Respondent will be responsible for all costs associated with the educational assignment or program.
- (e) Suspension. Suspension is an official separation from the University for a specific period of time and/or until certain conditions are met. A Respondent may be suspended from the University for serious Honor Code violations, multiple moderate Honor Code violations, multiple or repeated minor Honor Code violations, and/or any Honor Code violations while on

disciplinary probation. While on suspension, a Respondent (i) loses all rights and privileges at the University; (ii) may not represent the University in any manner; and (iii) is ineligible to apply for readmission to the University during the suspension period and/or until certain conditions are met. If a Respondent is suspended, the Respondent is prohibited, without the prior approval of the Vice Chancellor for Student Affairs (or his or her designee), from entering upon all University-controlled property, including University residence halls, from the date the suspension period begins until such date that the Respondent is readmitted to the University (even if the suspension period ends prior to the date of the Respondent's readmission). Entering upon University-controlled property without prior approval from the Vice Chancellor for Student Affairs (or his or her designee) may result in criminal trespass charges against the Respondent under the criminal laws of the State of Tennessee. Respondents permitted to return to the University following a period of suspension will be automatically placed on disciplinary probation for a designated period of time following their return. A Respondent who commits any Student Code of Conduct violations while on suspension may be subject to suspension for an additional period of time or barred from readmission and/or re-enrollment at the University.

- (f) Permanent Dismissal. Permanent dismissal is an official and permanent separation from the University. A Respondent may be permanently dismissed from the University when the Respondent's commission of one (1) or more Honor Code violations is deemed so serious as to warrant total and permanent disassociation from the University or when, through repeated violations of the Honor Code and/or violations of the Honor Code while on disciplinary probation or suspension, the Respondent exhibits blatant disregard for (i) the academic integrity and reputation of the University or (ii) the University's right to establish rules of conduct. A Respondent who is permanently dismissed from the University: (i) loses all rights and privileges at the University; (ii) may not represent the University in any manner; (iii) is indefinitely prohibited, without prior approval of the Vice Chancellor for Student Affairs (or his or her designee) from entering upon all University-controlled property, including University residence halls; and (iv) is permanently barred from re-enrolling at the University. Entering upon University-controlled property without prior approval from the Vice Chancellor for Student Affairs (or his or her designee) may result in criminal trespass charges against the Respondent under the criminal laws of the State of Tennessee.
- (g) Withholding of Degree. The University may withhold awarding a degree to a Respondent who has violated any University rule or policy. The University may withhold a degree for a definite period of time and/or until the Respondent has completed or served all sanctions or other requirements imposed by the University for releasing its award of the degree.
- (h) Revocation of Degree. The University make revoke a degree awarded to a Respondent if the Respondent obtained the degree, in part, through cheating, plagiarism, academic dishonesty, research misconduct, or other serious violation of the Honor Code. The University may also revoke a Respondent's degree if, after the degree was awarded, the University determines that the Respondent committed a serious violation of the Honor Code while a student, but prior to being awarded the degree, that would have warranted permanent dismissal of the Respondent. Before a Respondent's degree may be revoked, the Chancellor must approve the revocation of the degree.
- (5) More than one (1) of the disciplinary sanctions provided in this Section .10 may be imposed on a Respondent for any single violation of the Honor Code.
- (6) Disciplinary sanctions may be applied retroactively to the date of the Honor Code violation committed by the Respondent.

Authority: T.C.A. § 49-9-209(e) and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

**1720-02-01-.11 APPEALS.**

(1) Appeal to the Provost.

(a) Appeal Period. The decision of an Honor Code Officer in an Honor Code Officer Hearing or the Honor Code Board in an Honor Code Board Hearing may be appealed to the Provost by submitting a Notice of Appeal to the Office of Student Conduct in accordance with Section .11(1)(b) of this Chapter within five (5) business days of the effective date of the Notice of Decision to the appealing party. A Notice of Appeal not submitted within five (5) business days of the effective date of the Notice of Decision to the appealing party will not be considered.

(b) Notice of Appeal. A Notice of Appeal must state: (i) the name of the party appealing the decision; and (ii) the specific grounds for the appeal. Appeals not based on one (1) or more of the grounds provided under Section .11(1)(c) of this Chapter will not be considered.

(c) Grounds for Appeal. Appeals are limited to the following grounds:

1. The party's rights were violated in the hearing process;
2. New relevant and material information has become available that could not have been discovered at the time of the hearing;
3. The information presented did not support the decision by a preponderance of the evidence standard; or
4. The sanction(s) imposed were not appropriate for the violation.

(d) Response to Appeal by Non-Appealing Party. Upon receipt of a timely-submitted Notice of Appeal, the Office of Student Conduct will provide a copy of the Notice of Appeal to the non-appealing party, if applicable. The non-appealing party may respond to the appeal by submitting a written response to the Office of Student Conduct within three (3) business days of the effective date of the Notice of Appeal to the non-appealing party.

(e) Decision on Appeal.

1. Within ten (10) business days of the Office of Student Conduct's receipt of the Notice of Appeal or the non-appealing party's response to the appeal, whichever occurs later, the Provost (or his or her designee) will provide notice to the parties of his or her decision.
2. The Provost (or his or her designee) may (i) uphold, amend, or overturn the decision of the Honor Code Officer or Honor Code Board; or (ii) return the case to the Honor Code Officer or Honor Code Board for reconsideration.
3. If the Provost (or his or her designee) decides to uphold, amend, or overturn the decision of the Honor Code Officer or Honor Code Board, the decision of the Provost (or his or her designee) is final.
4. A decision by the Provost (or his or her designee) to return the case to the Honor Code Officer or Honor Code Board for reconsideration may not be appealed. Any decision by the Honor Code Officer or Honor Code Board on reconsideration may be appealed in accordance with this Section .11.

(2) Any disciplinary sanction(s) issued by the Honor Code Officer or the Honor Code Board will remain in force throughout the pendency of an appeal, unless the Respondent requests that the disciplinary sanction(s) be stayed pending the Respondent's appeal and such a request is granted by the Honor Code Officer or Honor Code Board, as applicable.

Authority: T.C.A. § 49-9-209(e) and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

**1720-02-01-.12 RECORDS OF HONOR CODE VIOLATIONS.**

- (1) Maintenance. A student's records relating to violations of the Honor Code are maintained by the Office of Student Conduct as part of the student's student conduct record. Records related to grade modifications or withdrawals resulting from violations of the Honor Code are also maintained by the University Records Office as part of a student's academic record.
- (2) Disclosure. A student may inspect and review his or her own student conduct records upon request to the Office of Student Conduct. The Office of Student Conduct may disclose a student's student conduct records to other persons upon written consent of the student. The Office of Student Conduct may disclose a student's student conduct records to other persons, including other University officials, without written consent from the student only in accordance with federal or state law.
- (3) Retention and Disposal of Student Conduct Records. The University will retain a student's student conduct records for a period of seven (7) years after the student's last date of enrollment with the University, unless required to retain the records for a longer period of time by law or as otherwise provided in this Section .12(3). The Office of Student Conduct will permanently retain student conduct records for students who receive one (1) or more of the following disciplinary sanctions (or equivalent sanctions under previous versions of the Honor Code and/or Student Code of Conduct) from the University: Suspension, Permanent Dismissal, Withholding of Degree, and Revocation of Degree.

Authority: T.C.A. § 49-9-209(e) and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

**RULES  
OF  
THE UNIVERSITY OF TENNESSEE AT CHATTANOOGA**

**CHAPTER 1720-2-1  
HONOR SYSTEM**

**TABLE OF CONTENTS**

1720-2-1-.01	Purpose	1720-2-1-.06	Procedures of the Honor Court
1720-2-1-.02	Jurisdiction	1720-2-1-.07	Failure to Appear
1720-2-1-.03	Student Rights	1720-2-1-.08	Honor Court Penalties
1720-2-1-.04	Duties and Powers	1720-2-1-.09	Appeals
1720-2-1-.05	Composition of the Honor Court	1720-2-1-.10	Plagiarism

**1720-2-1-.01 PURPOSE.**

- (1) ~~The Honor Code is a means by which the student can maintain his/her own integrity and also be loyal to the community which has admitted him/her to membership. Any person duly registered for any course is a student in The University of Tennessee at Chattanooga and takes upon himself/herself the privileges and responsibilities of membership in this community. The Honor Code of the University is based upon the assumption that the student recognizes the fundamental importance of honesty in all his/her dealings within this community. The very nature of education makes it a cooperative enterprise between student and teacher and between student and student. Any act of dishonesty violates and weakens this relationship and lessens the value of the education the student is pursuing.~~
- (2) ~~Honor Code Pledge. I pledge that I will neither give nor receive unauthorized aid on any test or assignment. I understand that plagiarism constitutes a serious instance of unauthorized aid. I further pledge that I will exert every effort to insure that the Honor Code is upheld by others and that I will actively support the establishment and continuance of a campus-wide climate of honor and integrity.~~

**1720-2-1-.02 JURISDICTION.**

- (1) ~~All students become subject to the rules and regulations of the Honor Code upon registration at The University of Tennessee at Chattanooga.~~
- (2) ~~The Honor code is violated by various types of misrepresentation or acts of dishonesty which bear on the academic evaluation of a student. The following are a few examples (not all inclusive) of violations of the Honor Code:~~
- (a) ~~Failure to adhere to Honor Code Pledge.~~
  - (b) ~~Bringing unauthorized material into examination area.~~
  - (c) ~~Making use of unauthorized assistance during an examination or in preparing a graded assignment.~~
  - (d) ~~Incorporating words or ideas of another author in a research paper without giving credit to their source. (Please see appendix for a detailed statement of plagiarism.)~~
  - (e) ~~Making unacknowledged use of another's computer program.~~
  - (f) ~~Cases involving aggravating circumstances, e.g., selling tests, answer keys or papers, will be considered serious violations.~~

(g) ~~Assisting in any act of dishonesty including, but not limited to, the above examples.~~

(h) ~~If an offense includes both an academic aspect (an Honor Code violation, e.g., cheating) and a social conduct violation (which is under the jurisdiction of the disciplinary dean and the Student Conduct Board, e.g. unauthorized entry), it should result in two separate hearings and the possibility of two separate penalties.~~

**1720-2-1-.03 STUDENT RIGHTS.** ~~Any student accused of violating the Honor Code is guaranteed the right to a hearing either before the Honor Court or in accordance with the Uniform Administrative Procedures Act (Public Acts 1974, Chapter 725, T.C.A. §4-507, et seq.). The procedures of the Honor Court are described below. The Uniform Administrative Procedures Act provides the student the right to a hearing before an individual selected by the Chancellor. This individual submits to the Chancellor a recommendation for the disposition of the case. The responsibility for the final decision rests with the Chancellor. At either type of hearing the student has the right to confront his or her accuser and cross-examine witnesses.~~

**1720-2-1-.04 DUTIES AND POWERS.**

(1) ~~The Honor Court shall perform the following:~~

(a) ~~Decide the question of guilt or innocence on suspected Honor Code violations.~~

(b) ~~Serve as an advisory committee reporting to the Chancellor of the University, faculty, and SGA.~~

(c) ~~Function as a study committee continually evaluating the nature and administration of the Honor Code.~~

(d) ~~Recommend appropriate disciplinary action.~~

**1720-2-1-.05 COMPOSITION OF THE HONOR COURT.** ~~The composition of the Honor Court shall consist of eight student members and four alternates (two appointed by the Faculty Council; two appointed by the President of the SGA, who shall assume office upon approval of the Senate; one appointed by the Office of Student Affairs; three appointed by the Senate [from outside the Senate]); and four faculty members or their alternates, who shall be appointed by the Faculty Council. The chair shall be one of the faculty members of the court and shall not vote. The Dean of Students shall serve as an ex-officio member of the Honor Court and shall not vote.~~

**1720-2-1-.06 PROCEDURES OF THE HONOR COURT.**

(1) ~~Both students and faculty may report suspected violations of the Honor Code to the chairman of the Honor Court. The chairman will provide a form on which these reports may be made. A student whose grade has been reduced because of a suspected violation of the Honor Code may also appeal to the Court. Upon receiving the report or appeal, the chairman will either schedule a hearing before the Honor Court or, at the discretion of the accused party, refer the case to the Chancellor for disposition in accordance with the Uniform Administrative Procedures Act. An Honor Court hearing will not be held, however, if the necessary witnesses, either students or faculty, are unwilling to appear.~~

(2) ~~An Honor court hearing requires a quorum of six voting members. One of the members of the Court will serve as secretary and record minutes for the hearing. At the discretion of the Chairman of the Honor Court, a recording of the hearing may be made. A copy of this record will be made available to the accused party upon payment of a reasonable fee for transcription. No record is kept of the deliberation of the Honor Court which follows the hearing, except for a record of any votes that may be taken.~~

(3) ~~Hearings of the Honor Court are closed to all except witnesses, the accused, the person~~

bringing the accusation, and members of the Court.

- (4) ~~Members of the Honor Court who are relatives or close personal acquaintances of the accused party will excuse themselves from the hearing.~~
- (5) ~~At the beginning of the hearing the chair will read the report of the suspected violation. The accused party has the right to state his or her position and to present a written statement. The accused party, the accuser, and the Court may call or question witnesses. All persons except members of the Honor Court and its adviser will be dismissed before the Court begins its deliberation. A verdict of guilty and recommended penalty must be supported by a majority of the members of the Court who are present and voting. The accused party will be asked to return at the conclusion of the deliberation for the announcement of the decision of the Court. If the accused is found to have violated the Honor Code, he or she will be advised of the right of appeal to the Chancellor.~~
- (6) ~~Both the accused party and the party reporting the suspected violations will be notified in writing by the Chairman of the Honor Court of the decision of the court. Written notification will also be sent to the Chancellor and the Dean of Students.~~

#### **~~1720-2-1-.07 FAILURE TO APPEAR.~~**

- (1) ~~If at the formal hearing of the case the student defendant or his or her representative fails either to appear or to provide the hearing officer with adequate prior notice of reasonable excuse for not appearing, the case will be disposed of in manner that is deemed just.~~
- (2) ~~If at a formal hearing of a student defendants case the plaintiff either fails to appear or provide adequate prior notice of a reasonable excuse for not appearing, the case shall be dismissed for failure to prosecute, upon proper motion by the student defendant.~~
- (3) ~~A case either decided by or dismissed under the provisions of (1) or (2) above may be reopened if:
  - (a) ~~The absent party presents sufficient excuse within five days following such decision or dismissal; and~~
  - (b) ~~The excuse is found reasonable by the hearing officer.~~~~

#### **~~1720-2-1-.08 HONOR COURT PENALTIES.~~**

- (1) ~~If a student is found guilty of violating the Honor Code for the first time, normally the court will place the student on disciplinary probation for one year, and will recommend to the instructor that the student be given a grade of "F" in the course. In very serious cases the court may recommend suspension or dismissal for a first offense. In very unusual situations, where circumstances warrant, the Court may recommend a lesser penalty.~~
- (2) ~~If a student is found guilty of a second offense, the Court will recommend to the instructor that the student will be given a grade of "F" in the course and will recommend to the Chancellor that the student be suspended from the University for the subsequent fall or spring semester. In the case of a student who will graduate at the end of the current semester, the Court will recommend that graduation be delayed until the end of the semester during which the suspension is in effect. In very serious cases the Court may recommend dismissal for a second offense.~~
- (3) ~~If a student is found guilty of third violation of the Honor Code, the Court will recommend to the instructor that the student be given a grade of "F" in the course and will recommend to the Chancellor that the student be dismissed from the University. If a student who would otherwise~~

graduate at the end of the current semester is dismissed, he or she will not be allowed to graduate.

- (4) Any attempt to withdraw from the course or the University, prior to an Honor Court Hearing, shall not exempt the student from the penalties imposed by the court. The student will be reinstated in the course/University if necessary.
- (5) The student newspaper, the University ECHO will be asked to publish every semester a summary of the Honor Court actions (number of cases and their dispositions) but without names.

**1720-2-1-09 APPEALS.** The Chancellor will serve as the appeals officer for both the accused party and person reporting the violation. Recommendations for suspension or dismissal may not be appealed to the Petitions Committee. Appeals to the Chancellor must be made in writing within five (5) business days of receiving written notification of the decision of the Court.

#### **1720-2-1-10 PLAGIARISM.**

- (1) To plagiarize means to take someone else's words and/or ideas (or patterns of ideas) and to present them to the reader as if they are yours. Plagiarism, then, is an act of stealing. It is also a stupid act because it doesn't help you learn, and it is a dangerous act because you can be severely punished for it.
- (2) You should be on guard against plagiarism at any time when writing a paper to be turned in. In some papers you write, you will be assigned to use only your own ideas and will probably not have to worry about plagiarism. At any time, however, that you read anything in preparation for a paper or consciously recall anything that you have read or heard, you must be prepared to provide documentation.
  - (a) Generally, when you use someone else's ideas and/or words, you will either quote that person directly or you will paraphrase or summarize that person's words. You must let the reader know which you are doing.
    1. If you quote the source directly, you must:
      - (i) Put quotation marks before and after that person's words;
      - (ii) Let the reader know the source by
        - (I) Putting a footnote number at the end of the quotation, or
        - (II) Putting at least the source's name in parentheses after the quotation marks.
    2. If you paraphrase (a paraphrase is about the same length as the original, but in different words) or if you summarize (a summary is a severely shortened version of the original), you must:
      - (i) Introduce the source in some manner at the beginning of the passage being paraphrased (or summarized) so that a reader can tell where your idea stops and other persons begin;
      - (ii) State the ideas taken from the source in your own words and your own arrangement. It is possible to plagiarize sentence patterns as well as exact words. A handy rule: If, in a paraphrase or summary, you use a stretch of more than three words in their exact order from a source, you should put

these words into quotation marks;

- (iii) Provide an exact source citation for the ideas paraphrased or summarized. This may be done either by footnote number at the end of the passages or by a parenthetical reference to the work and page(s). This citation provides credit to the author being used and allows the reader access to the material for further study.
3. You must also provide a footnote for any chart, graph, figure, table, summary, or other data taken directly from another source or any information derived from such materials.
- (3) When you are assigned a research paper or project, check with your instructor to determine what particular footnote style you should follow. If, at any time, you have questions or doubts as to whether or not you are plagiarizing, check with your instructor BEFORE you complete your paper.

\* 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)
John Compton	x				
Commissioner Charles Hatcher				x	
Decosta Jenkins	x				
Kara Lawson	x				
Amy E. Miles	x				
Kenneth Packer (non-voting trustee)					
William C. Rhodes III	x				
Donnie Smith	x				
Kim H. White	x				
Alan D. Wilson	x				
Jamie Woodson	x				

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the University of Tennessee Board of Trustees on 03/01/2019, 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.

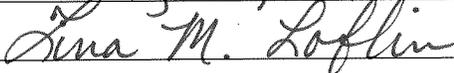
Date: 7/25/19

Signature: 

Name of Officer: Matthew Scaggins

Title of Officer: General Counsel

Subscribed and sworn to before me on: July 25, 2019

Notary Public Signature: 

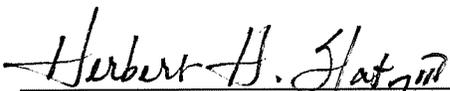
My commission expires on: 8-1-2022



Agency/Board/Commission: University of Tennessee (Chattanooga)

Rule Chapter Number(s): 1720-02-01 Honor Code

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. Slattery III  
Attorney General and Reporter  
8/27/2019  
Date

**Department of State Use Only**

Filed with the Department of State on: 9/30/19

Effective on: 12/29/19

  
Tre Hargett  
Secretary of State

SEP 30 PM 12:21  
SECRETARY OF STATE  
TENTATIVE

## G.O.C. STAFF RULE ABSTRACT

<u>DEPARTMENT:</u>	University of Tennessee
<u>CAMPUS:</u>	Chattanooga
<u>SUBJECT:</u>	Parking Rules / Citations and Enforcement
<u>STATUTORY AUTHORITY:</u>	None
<u>EFFECTIVE DATES:</u>	December 29, 2019 through June 30, 2020
<u>FISCAL IMPACT:</u>	Minimal
<u>STAFF RULE ABSTRACT:</u>	<p>As a component of the University of Tennessee at Chattanooga's enhancement of its parking system, the campus is planning to implement License Plate Recognition (LPR) technology to bring more efficiency to the enforcement process. LPR will add greater flexibility for the students, faculty, and staff of UTC as it will negate the need for physical permits and will recognize the registered license plates as the student's/employee's permit. This will greatly reduce administrative and constituent efforts related to issuance, display, and securing of a physical hangtag permit.</p> <p>To implement the LPR technology, the UTC Parking Rules must be revised. The major changes in this proposed rule are to:</p> <ul style="list-style-type: none"><li>■ Redefine "UTC parking permit" to include registered license plates;</li><li>■ Limit the number of allowed registered vehicles to three (3);</li><li>■ Clearly define the proper display of registered license plates, including vehicles parked "nose-in;" and</li><li>■ Update the violations examples list to include the new definitions and rules.</li></ul>

## **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 rule is not anticipated to have an impact 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 Regula(<http://publications.tnsosfiles.com/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

The rule is not anticipated to have an impact on local government.

**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;

As a component of The University of Tennessee at Chattanooga's enhancement of its parking system, the campus is planning to implement License Plate Recognition (LPR) technology to bring more efficiency to the enforcement process. LPR will add greater flexibility for the students, faculty, and staff of UTC as it will negate the need for physical permits and will recognize the registered license plates as the student's/employee's permit. This will greatly reduce administrative and constituent efforts related to issuance, display, and securing of a physical hangtag permit. To implement the LPR technology, the UTC Parking Rules must be revised. The major changes are:

- Redefining "UTC parking permit" to include registered license plates;
- Limiting the number of allowed registered vehicles to three (3);
- Clearly defining the proper display of registered license plates, including vehicles parked "nose-in;" and
- Updating the violations examples list to include the new definitions and 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;

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;

The University of Tennessee Board of Trustees urges adoption. The students and employees of UTC are most directly affected by this rule. The non-voting student trustee did not speak against adoption of the rule. The University of Tennessee Board of Trustees did not receive any requests from the public to address the Board about 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 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;

Tyler S. Forrest, Associate Vice Chancellor for Administration and Finance, The University of Tennessee at Chattanooga  
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;

Tyler S. Forrest, Associate Vice Chancellor for Administration and Finance, The University of Tennessee at Chattanooga  
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

Tyler S. Forrest  
Associate Vice Chancellor for Administration & Finance  
The University of Tennessee at Chattanooga  
615 McCallie Avenue, Dept. 5705  
Chattanooga, TN 37403

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: 09-33-19  
Rule ID(s): 9250  
File Date: 9/30/19  
Effective Date: 12/29/19

## 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>	University of Tennessee
<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

**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
1720-02-03	Parking Rules
Rule Number	Rule Title
1720-02-03-.01	General
1720-02-03-.02	Vehicle Registration and Parking Permits
1720-02-03-.04	Parking Citations and Enforcement

**RULES  
OF  
THE UNIVERSITY OF TENNESSEE AT CHATTANOOGA**

**CHAPTER 1720-02-03  
PARKING RULES**

1720-02-03-.01	General	1720-02-03-.04	Parking Citations and Enforcement
1720-02-03-.02	Vehicle Registration and Parking Permits	1720-02-03-.05	Penalties
1720-02-03-.03	Parking Requirements and Limitations	1720-02-03-.06	Appeals

**1720-02-03-.01 GENERAL.**

- (1) These rules are intended to promote the safe and orderly parking of vehicles on the property of The University of Tennessee at Chattanooga (UTC); facilitate the safe and convenient operation of UTC The University of Tennessee at Chattanooga (UTC) business and services; and regulate parking on campus, with priority given to UTC business and services.
- (2) The UTC Department of Parking Services and the UTC Department of Public Safety implement and enforce these rules.
- (3) All persons parking vehicles and all persons owning vehicles parked on UTC property are subject to and required to comply with these rules.
- (4) All vehicle accidents, incidents, thefts, or break-ins that occur on UTC property should be reported immediately to the UTC Police Department [(423) 425-4357].
- (5) Wherever used in these rules:
  - (a) "Designated parking space" means an area, in either a paved or unpaved lot, delineated by UTC for parking for a single vehicle. In a paved parking lot, a designated parking space is delineated by straight white or yellow lines on both sides of the space. In an unpaved parking lot, a designated parking space is delineated by a wheel stop or parking block on one end of the space.
  - (b) "Registered license plate" means a license plate registered with the UTC Department of Parking Services to serve as the UTC parking permit for a registrant's vehicle.
  - (b)(c) "Registered vehicle" means a vehicle registered with the UTC Department of Parking Services by a registrant.
  - (c)(d) "Registrant" means a UTC student or employee to whom a UTC parking permit is issued.
  - (d)(e) "Unregistered vehicle" means a vehicle not registered with the UTC Department of Parking Services.
  - (e)(f) "UTC" means The University of Tennessee at Chattanooga.
  - (f)(g) "UTC parking permit" means a registered license plate, or either a hangtag or decal issued by UTC, that has not expired and, when properly displayed on a vehicle, authorizes a vehicle to be parked in certain designated parking spaces on UTC property.

~~(g)~~(h) "UTC property" means all land, grounds, structures, and any other physical property owned, controlled, or operated by UTC.

~~(h)~~(i) "Vehicle" means any type of vehicle, including but not limited to a motorcycle.

**Authority:** *Tenn. Code Ann. § 49-9-209(e), Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64*

#### **1720-02-03-.02 VEHICLE REGISTRATION AND PARKING PERMITS.**

~~(1)~~ All vehicles parked on UTC property must have an unexpired UTC parking permit properly displayed, except as otherwise provided by law or UTC policy.

~~(1)~~~~(2)~~ A registrant may register up to three (3) vehicles under a single UTC parking permit, but only one (1) of the vehicles registered under the permit may be parked on UTC property at a time. If more than one (1) vehicle registered under a single UTC parking permit are parked on UTC property at the same time, the registrant will be cited for a violation for each vehicle parked on UTC property beyond the one (1) vehicle allowed.

~~(2)~~~~(3)~~ UTC students and employees must register vehicles with the UTC Department of Parking Services in order to obtain a UTC parking permit for a vehicle.

~~(3)~~~~(4)~~ UTC parking permits may be obtained for a fee on the UTC Parking Services website (<http://www.utc.edu/auxiliary-services/parking/>), in person at the UTC Bursar's Office, or at a UTC parking garage or other location where a UTC pay-and-display parking permit station is located.

~~(4)~~~~(5)~~ A registered license plate is properly displayed on a vehicle only if: (i) the registered license plate is clearly displayed and visible on the rear of the vehicle; and (ii) the vehicle is parked front first in a designated parking place. If a registered license plate is displayed on the rear of a vehicle, but the vehicle is parked back first in a designated parking place, the registered license plate is not considered properly displayed, and the vehicle will be cited for a violation. Hangtag parking permits must be displayed on the rearview mirror of the vehicle. Other types of UTC parking permits must be clearly visible from the outside of the vehicle. Expired UTC parking permits must be removed or covered so that only an unexpired UTC parking permit is displayed.

~~(5)~~~~(6)~~ A specific expiration date is indicated on each UTC parking permit. A UTC parking permit is not valid after its expiration date.

~~(6)~~~~(7)~~ A registrant is responsible for his or 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, UTC will not collect multiple fines for a single violation.

~~(7)~~~~(8)~~ A registrant is responsible for his or her UTC 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 UTC 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, UTC will not collect multiple fines for a single violation.

~~(8)~~~~(9)~~ 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, UTC will not collect multiple fines for a single violation.

~~(9)~~(10) If a registrant is operating a vehicle other than his or her registered vehicle, then the registrant must display his or her UTC parking permit on the rearview mirror of the alternate vehicle and the parking permit must be clearly visible from the outside. Rule 1720-02-03-.02~~(9)~~(10) does not apply to a situation in which a registrant is operating another person's vehicle, with permission, and that person's valid UTC parking permit is displayed on the rearview mirror.

~~(40)~~(11) A registrant whose UTC parking permit has been lost or stolen may obtain a replacement parking permit for a fee of three dollars (\$3.00) upon providing proof of loss of the previously-issued parking permit.

**Authority:** *Tenn. Code Ann. § 49-9-209(e), Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64*

#### **1720-02-03-.03 PARKING REQUIREMENTS AND LIMITATIONS.**

- (1) Persons are authorized to park a vehicle only in a designated parking space located in those areas or lots for which a UTC parking permit authorizes the vehicle to be parked. Lack of an available authorized designated parking space will not excuse a person from violating any of these rules.
- (2) A vehicle must not be parked in a manner that blocks or obstructs traffic, a street, sidewalk, fire hydrant, building entrance or exit, another vehicle, or fire lane, or in another manner that disrupts the orderly affairs of UTC.
- (3) Certain parking spaces are designated for motorcycles only, and motorcycles must be parked in those designated parking spaces.
- (4) Motorcycles must not be parked in any area not authorized for the parking of vehicles that are not motorcycles, including within the confines of the exterior perimeter of any building. Motorcycles must not be parked in a manner that blocks stairways, sidewalks, or pedestrian access.
- (5) Traffic control signs and devices and the directions of police officers must be obeyed when parking vehicles.
- (6) On special occasions (including but not limited to athletic events, concerts, and graduation exercises) or in emergency situations, the UTC Department of Parking Services or the UTC Department of Public Safety may impose parking limitations more restrictive or permissive than in these rules, as they determine to be appropriate under the circumstances.
- (7) The UTC Department of Parking Services reserves the right to alter, block, reserve, or reallocate designated parking spaces on UTC property at any time.

**Authority:** *Tenn. Code Ann. § 49-9-209(e), Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64*

#### **1720-02-03-.04 PARKING CITATIONS AND ENFORCEMENT.**

(1) The following examples constitute violations of these rules and which may result in a citation with the corresponding fine:

(a) No Valid Parking Permit Displayed/Properly Displayed \$30

(b)	Expired Parking Permit Displayed	\$30
(c)	Displaying, Selling, or Purchasing a Stolen, Deactivated, Altered, Counterfeit, or Reproduced Parking Permit	\$100
(d)	Vehicle Not Parked in a Designated Parking Space	\$30
(e)	Vehicle Parked in Multiple Designated Parking Spaces	\$30
(f)	<u>Violation of Rule 1720-02-03-.02(2)</u>	\$30
(g)	<u>Violation of Rule 1720-02-03-.02(8)</u>	\$30
(h)	<u>Violation of Rule 1720-02-03-.02(9)</u>	\$30
( <del>f</del> )(i)	Vehicle Parked in Unauthorized Lot or Space	\$30
( <del>g</del> )(j)	Vehicle Parked Over Posted Time Restriction	\$30
( <del>h</del> )(k)	Vehicle Parked in Fire Lane	\$40
( <del>i</del> )(l)	Vehicle Parked in Violation of Rule 1720-02-03-.03(2)	\$40
( <del>j</del> )(m)	Unauthorized Vehicle in Disability Parking Space	\$200
( <del>k</del> )(n)	Unauthorized Vehicle in Disability Loading Area	\$200
( <del>l</del> )(o)	Unauthorized Use of Disability Parking Permit	\$200

(2) Immobilization and Towing of Vehicles

- (a) UTC may tow or immobilize a vehicle without advance notice to the registrant (if a registered vehicle) or the owner/operator (if an unregistered vehicle) if the vehicle is parked:
1. In a fire lane or in a manner which blocks a fire lane;
  2. In a manner that blocks an emergency exit;
  3. In a designated disability parking space or disability loading area;
  4. In a parking space reserved for designated vehicles;
  5. While displaying a stolen/deactivated/altered/counterfeit/reproduced UTC parking permit; or
  6. In such other manner that violates Rule 1720-02-03-.03(2).
- (b) If a vehicle is towed or immobilized without advance notice, the registrant (if a registered vehicle) or the owner/operator (if an unregistered vehicle) shall have the right to a hearing upon request to the UTC Department of Parking Services to contest the parking violation(s) for which the vehicle was towed or immobilized. A registrant/owner/operator may pay any fines, penalties, immobilization fees and/or towing charges required for the mobilization or release of the vehicle prior to the

hearing. If the underlying parking citation for which the vehicle was immobilized or towed is successfully appealed, then UTC shall refund any fines, penalties, immobilization fees or towing charges paid by the registrant/owner/operator.

- (c) UTC may tow or immobilize a vehicle if sixty dollars (\$60.00) or more in unpaid parking citations have been issued relating to the parking of the vehicle and the appeal periods for such citations have expired, provided the registrant (if a registered vehicle) or the owner/operator (if an unregistered vehicle) has been provided advance notice and the opportunity to contest the citations.
  - 1. The registrant (if a registered vehicle) or the owner/operator (if an unregistered vehicle) shall first be notified in writing by a windshield notice (or other method of notice including without limitation e-mail) of UTC's intent to immobilize or tow the vehicle the next time it is found parked on UTC property, whether legally or illegally, and the right to a hearing within thirty (30) calendar days. If the registrant/owner/operator does not request a hearing or prevail at a hearing, the vehicle may be towed or immobilized the next time it is found parked on UTC property, whether legally or illegally.
  - 2. Registrants/owners/operators of vehicles towed or immobilized shall have the right to contest UTC's action at a hearing. A registrant/owner/operator may pay any fines, penalties, immobilization fees and/or towing charges required for the mobilization or release of the vehicle prior to the hearing. If the underlying parking citation for which the vehicle was immobilized or towed is successfully appealed, then UTC shall refund any fines, penalties, immobilization fees or towing charges paid by the registrant/owner/operator.
- (d) Registrants/owners/operators of vehicles that are immobilized pursuant to these rules will be required to pay an immobilization fee of fifty dollars (\$50.00) as a condition of the vehicle being mobilized.
- (e) A vehicle that is towed pursuant to these rules will be impounded in the UTC impound lot, subject to availability of space in the UTC impound lot. If there is no available space in the UTC impound lot, the vehicle will be towed to an impound lot not owned, controlled, or operated by UTC.
- (f) Impounded or immobilized vehicles will be released upon the registrant/owner/operator of the vehicle providing identification and paying to UTC all unpaid parking fines, penalties, immobilization fees, and towing charges levied by UTC. The release of a vehicle impounded in an impound lot not owned or operated by UTC will be subject to payment of additional fees or charges levied by the owner of the impound lot.

**Authority:** *Tenn. Code Ann. § 49-9-209(e), Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64*

**1720-02-03-.05 PENALTIES.**

- (1) UTC parking citation fines that are not paid or appealed within fourteen (14) calendar days after issuance shall incur a late payment penalty of fifty percent (50%) of the fine amount.
- (2) A UTC student who fails to pay parking citation fines or late payment penalties will not be permitted to register for course work, receive credit, receive a degree, or obtain a transcript until all parking fines and penalties are paid, provided the parking citations giving rise to

the fines and penalties are not subject to a pending appeal or the appeal period for such citations has expired.

- (3) A UTC employee who persists in violating these rules may be reported to his or her supervisor/department head, and outstanding parking citation fines and penalties may be collected through payroll deduction as provided under UTC policy.
- (4) UTC students who persist in violating these rules or commit a single violation that is extreme in nature may be referred to the UTC Dean of Students for disciplinary action, which may include but not be limited to suspension or dismissal from UTC or loss of the privilege of parking a vehicle on UTC property.
- (5) UTC students and employees with unpaid parking citation fines or late penalties will not be allowed to register a vehicle, renew their UTC parking permits, or purchase UTC parking permits, until all fines and penalties are paid.
- (6) UTC may pursue collection efforts on unpaid parking citation fines and penalties.

**Authority:** *Tenn. Code Ann. § 49-9-209(e), Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64*

#### **1720-02-03-.06 APPEALS.**

- (1) Persons who want to appeal a parking citation must submit the appeal online at the UTC Department of Parking Services website (<http://www.utc.edu/auxiliary-services/parking/>) or in writing at the UTC Bursar's Office within fourteen (14) calendar days of the issuance of the citation. 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.
- (2) An appeal of a parking citation issued to a vehicle may be made either by the registrant (if a registered vehicle) or the owner/operator (if an unregistered vehicle).
- (3) The UTC Student Parking Appeals Board will review appeals of parking citations issued to UTC students. The members of the UTC Student Parking Appeals Board will be appointed in accordance with Rule 1720-02-05-.14.
- (4) The UTC Student Parking Appeals Board will set a hearing on each student appeal and will provide written notice to the student of the hearing date. Students may attend their appeal hearing and present evidence in support of their appeal. Students are not required to attend their appeal hearing, and a student may request that the Board consider the appeal based on the student's written appeal submissions. If a student fails to appear without advance notice to the Board, the Board will consider the appeal in the student's absence. All decisions of the Board are final and will be binding regardless of whether the student attended the hearing. The Board will provide written notice of its decision to the student.
- (5) The UTC Nonstudent Parking Appeals Board will adjudicate the appeals of parking citations issued to persons who are not UTC students. The members of the UTC Nonstudent Parking Appeals Board will be appointed by the UTC Chief Business Officer or his or her designee.
- (6) The UTC Nonstudent Parking Appeals Board will set a hearing on each nonstudent appeal and will provide written notice to the appellant of the hearing date. Appellants may attend their appeal hearing and present evidence in support of their appeal. Appellants are not required to attend their appeal hearing, and an appellant may request that the board consider the appeal based on the appellant's written appeal submissions. If an appellant

fails to appear without advance notice to the board, the board will consider the appeal in the appellant's absence. All decisions of the board are final and will be binding regardless of whether the appellant attended the hearing. The board will provide written notice of its decision to the appellant.

**Authority:** *Tenn. Code Ann. § 49-9-209(e), Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64*

\* 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)
John Compton	x				
Commissioner Charles Hatcher	x			x	
Decosta Jenkins	x				
Kara Lawson	x				
Amy E. Miles	x				
Kenneth Packer (non-voting trustee)					
William C. Rhodes III	x				
Donnie Smith	x				
Kim H. White	x				
Alan D. Wilson	x				
Jamie Woodson				x	

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the University of Tennessee Board of Trustees on 06/21/2019, 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.

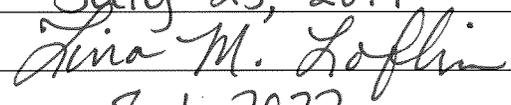
Date: 7/25/19

Signature: 

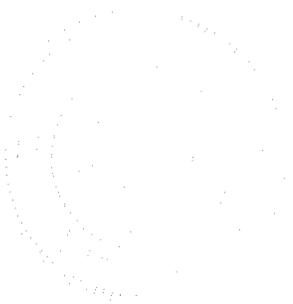
Name of Officer: Matthew Suggins

Title of Officer: General Counsel

Subscribed and sworn to before me on: July 25, 2019

Notary Public Signature: 

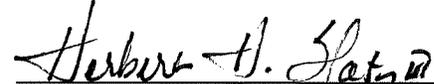
My commission expires on: 8-1-2022



Agency/Board/Commission: University of Tennessee (Chattanooga)

Rule Chapter Number(s): 1720-02-03 Parking Rules

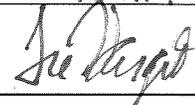
All proposed rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

  
\_\_\_\_\_  
Herbert H. Slatery III  
Attorney General and Reporter  
9/2/2019  
\_\_\_\_\_  
Date

**Department of State Use Only**

Filed with the Department of State on: 9/30/19

Effective on: 12/29/19

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

2019 SEP 30 PM 12: 24  
SECRETARY OF STATE  
PUBLICATIONS

## G.O.C. STAFF RULE ABSTRACT

<u>DEPARTMENT:</u>	University of Tennessee
<u>CAMPUS:</u>	Chattanooga
<u>SUBJECT:</u>	Student Code
<u>STATUTORY AUTHORITY:</u>	There is no federal or state law or regulation mandating the promulgation of this rule.
<u>EFFECTIVE DATES:</u>	December 29, 2019 through June 30, 2020
<u>FISCAL IMPACT:</u>	None
<u>STAFF RULE ABSTRACT:</u>	<p>On March 29, 2017, the University of Tennessee Board of Trustees (Board) approved substantial revisions to the student code of conduct for The University of Tennessee, Knoxville (UTK) following a comprehensive review by UTK of its student conduct policies and procedures. Prompted by the revision of the UTK student code of conduct, the Board requested that the other UT campuses conduct similar reviews of their respective student codes of conduct. In 2017, the University of Tennessee at Chattanooga (UTC) tasked its Division of Student Affairs to conduct a similar comprehensive review of the UTC Student Code of Conduct (UTC Code).</p> <p>UTC's Division of Student Affairs developed a proposed new UTC Code to improve clarity and organization, to effect needed changes in UTC student conduct policy and process, to ensure consistency with University policy and current law, to remove redundant or obsolete provisions, and to more closely align UTC student conduct policy and process with the UTK student code of conduct.</p> <p>The proposed UTC Code does not substantively change the hearing processes and procedures through which student conduct cases are currently resolved, but rather explains those processes and procedures in more detail to provide clarity to students involved in the student conduct process. Specific changes include:</p>

- Reorganizes and consolidates the sections of the Code to improve clarity;
- Adds defined terms utilized in the UTC Code and places the defined terms in alphabetical order under the "Definitions" section to improve clarity (Section .02);
- Clarifies the jurisdictional scope of the UTC Code by more clearly defining when a student is subject to the UTC Code (Sections .02(21) and .03(2));
- Clarifies the application of the UTC Code to conduct fairly attributable to student organizations (Section .03(3));
- Clarifies that violations of the UTC Honor Code are resolved through the Honor Code process instead of the student conduct process (Section .03(6));
- Makes the definition of the "Harassment" Standard of Conduct consistent with the definition of "harassment" under the "Campus Free Speech Protection Act" passed by the Tennessee General Assembly in 2017 (Section .04(6));
- Adds a specific reference to UTC's Policy on Sexual Misconduct, Relationship Violence, and Stalking in the Standards of Conduct (Section .04(7));
- Incorporates changes to the "Unauthorized Use of Weapons and Related Misconduct" Standard of Conduct to align with 2017 legislative changes related to weapons (Section .04(18));
- Clarifies the due process rights of students in the student conduct process, including the right of students to an advisor during the student conduct process (Section .05);
- Incorporates "conflicts of interest" protections consistent with the "Student Due Process Protection Act" enacted by Tennessee General Assembly in 2018 (Section .05(6));
- Adds language to further explain the initial and pre-resolution stages of the student conduct process (Section .06);
- Adds language to provide further explanation of the methods of resolution available in student conduct cases, including the ability in certain cases to resolve misconduct allegations through resolution agreements, alternative resolution agreements, and behavioral agreements (Section .07);

- Clarifies when a student may contest misconduct allegations through a hearing under the Uniform Administrative Procedures Act (UAPA) (Section .07(1)(a)(3));
- Clarifies when an Emergency Ad Hoc Committee Hearing may be held and removes such hearing provisions from Section .15 of the current student code and incorporates them under Section .07(f) of the proposed UTC Code (Section .07(1)(f));
- Adds language to provide further explanation of the process for Hearing Officer Hearings (Section .08);
- Adds language to provide further explanation of the process for Student Conduct Board Hearings, including incorporation of procedural requirements in sexual misconduct cases required under the "Student Due Process Protection Act" enacted by Tennessee General Assembly in 2018 (Section .09);
- Adds language clarifying the types of disciplinary sanctions that may be issued for Code violations and the manner in which such sanctions apply, and adds language that affirmatively trespasses suspended students from campus until such time that they are readmitted (Section .10);
- Adds language allowing for disciplinary sanctions that are primarily educational in purpose (Section .10(1)(c)-(d));
- Clarifies the process for appealing decisions by Hearing Officers and Student Conduct Boards (Section .11);
- Removes the right to appeal to the Chancellor. The final decision on appeal is now made by the Vice Chancellor of Student Affairs. (Section .11 (1)(e)(3));
- Clarifies the different ways in which the student conduct process may be concluded (Section .12);
- Adds language clarifying the types of interim actions that the University may take during the pendency of the student conduct process and how they are applied (Section .13);
- Reduces the size of the student parking appeals board and revises the manner in which board members are selected in order to allow for more efficient administration of student parking appeals. Sections .13 and .14 of the current student code regarding student parking appeals

have been consolidated into Section .14 of the proposed UTC Code. (Section .14);

- Adds language explaining how student conduct records are maintained and when they are subject to disposal (Section .14);

- Establishes a Good Samaritan/Amnesty policy to encourage students to notify appropriate officials in the event of a health or safety emergency (e.g., situation involving the abuse of alcohol or other drugs) (Section .15);

- Removes the provisions under Section .05 of the current student code regarding residence hall inspections on the basis that such provisions are unnecessary. The same rights of entry accorded to University officials are addressed in UTC's standard housing contracts that all students must sign in order to live in University housing;

- Removes the provisions under Section .12 of the current student code regarding the process for withdrawing or temporarily suspending a student due to physical or psychological illness. The process has not been utilized since its adoption in 2012 and is not viewed by UTC's Division of Student Affairs as a best practice for handling conduct cases involving students with psychological illness.

## **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 rule is not anticipated to have an impact 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 Regula(<http://publications.tnsosfiles.com/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

The rule is not anticipated to have an impact on local government.

## 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;

On March 29, 2017, the UT Board of Trustees (Board) approved substantial revisions to the student code of conduct for The University of Tennessee, Knoxville (UTK) following a comprehensive review by UTK of its student conduct policies and procedures. Prompted by the revision of the UTK student code of conduct, the Board requested that the other UT campuses conduct similar reviews of their respective student codes of conduct. In 2017, the University of Tennessee at Chattanooga (UTC) tasked its Division of Student Affairs to conduct a similar comprehensive review of the UTC Student Code of Conduct (UTC Code).

UTC's Division of Student Affairs developed a proposed new UTC Code to improve clarity and organization, to effect needed changes in UTC student conduct policy and process, to ensure consistency with University policy and current law, to remove redundant or obsolete provisions, and to more closely align UTC student conduct policy and process with the UTK student code of conduct.

The proposed UTC Code does not substantively change the hearing processes and procedures through which student conduct cases are currently resolved, but rather explains those processes and procedures in more detail to provide clarity to students involved in the student conduct process. Specific changes include:

- Reorganizes and consolidates the sections of the Code to improve clarity
- Adds defined terms utilized in the UTC Code and places the defined terms in alphabetical order under the "Definitions" section to improve clarity (Section .02)
- Clarifies the jurisdictional scope of the UTC Code by more clearly defining when a student is subject to the UTC Code (Sections .02(21) and .03(2))
- Clarifies the application of the UTC Code to conduct fairly attributable to student organizations (Section .03(3))
- Clarifies that violations of the UTC Honor Code are resolved through the Honor Code process instead of the student conduct process (Section .03(6))
- Makes the definition of the "Harassment" Standard of Conduct consistent with the definition of "harassment" under the "Campus Free Speech Protection Act" passed by the Tennessee General Assembly in 2017 (Section .04(6))
- Adds a specific reference to UTC's Policy on Sexual Misconduct, Relationship Violence, and Stalking in the Standards of Conduct (Section .04(7))
- Incorporates changes to the "Unauthorized Use of Weapons and Related Misconduct" Standard of Conduct to align with 2017 legislative changes related to weapons (Section .04(18))
- Clarifies the due process rights of students in the student conduct process, including the right of students to an advisor during the student conduct process (Section .05)
- Incorporates "conflicts of interest" protections consistent with the "Student Due Process Protection Act" enacted by Tennessee General Assembly in 2018 (Section .05(6))
- Adds language to further explain the initial and pre-resolution stages of the student conduct process (Section .06)
- Adds language to provide further explanation of the methods of resolution available in student conduct cases, including the ability in certain cases to resolve misconduct allegations through resolution agreements, alternative resolution agreements, and behavioral agreements (Section .07)

- Clarifies when a student may contest misconduct allegations through a hearing under the Uniform Administrative Procedures Act (UAPA) (Section .07(1)(a)(3))
- Clarifies when an Emergency Ad Hoc Committee Hearing may be held and removes such hearing provisions from Section .15 of the current student code and incorporates them under Section .07(f) of the proposed UTC Code (Section .07(1)(f))
- Adds language to provide further explanation of the process for Hearing Officer Hearings (Section .08)
- Adds language to provide further explanation of the process for Student Conduct Board Hearings, including incorporation of procedural requirements in sexual misconduct cases required under the "Student Due Process Protection Act" enacted by Tennessee General Assembly in 2018 (Section .09)
- Adds language clarifying the types of disciplinary sanctions that may be issued for Code violations and the manner in which such sanctions apply, and adds language that affirmatively trespasses suspended students from campus until such time that they are readmitted (Section .10)
- Adds language allowing for disciplinary sanctions that are primarily educational in purpose (Section .10(1)(c)-(d))
- Clarifies the process for appealing decisions by Hearing Officers and Student Conduct Boards (Section .11)
- Removes the right to appeal to the Chancellor. The final decision on appeal is now made by the Vice Chancellor of Student Affairs. (Section .11(1)(e)3)
- Clarifies the different ways in which the student conduct process may be concluded (Section .12)
- Adds language clarifying the types of interim actions that the University may take during the pendency of the student conduct process and how they are applied. (Section .13)
- Reduces the size of the student parking appeals board and revises the manner in which board members are selected in order to allow for more efficient administration of student parking appeals. Sections .13 and .14 of the current student code regarding student parking appeals have been consolidated into Section .14 of the proposed UTC Code. (Section .14)
- Adds language explaining how student conduct records are maintained and when they are subject to disposal (Section .14)
- Establishes a Good Samaritan/Amnesty policy to encourage students to notify appropriate officials in the event of a health or safety emergency (e.g., situation involving the abuse of alcohol or other drugs) (Section .15)
- Removes the provisions under Section .05 of the current student code regarding residence hall inspections on the basis that such provisions are unnecessary. The same rights of entry accorded to University officials are addressed in UTC's standard housing contracts that all students must sign in order to live in University housing.
- Removes the provisions under Section. 12 of the current student code regarding the process for withdrawing or temporarily suspending a student due to physical or psychological illness. The process has not been utilized since its adoption in 2012 and is not viewed by UTC's Division of Student Affairs as a best practice for handling conduct cases involving students with psychological illness.

**(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;

The University of Tennessee Board of Trustees urges adoption. The UTC Division of Student Affairs, student body, and faculty are the UTC constituencies most directly affected by this rule. The Division of Student Affairs, through the Office of Student Conduct and Dean of Students Office, is responsible for the administration of student conduct matters at UTC and is supportive of this rule. The UTC Student Government Association and UTC Graduate Student Association together represent the entire student body and are supportive of this rule. The UTC Faculty Senate represents the entire faculty body and is supportive of this rule. The University of Tennessee Board of Trustees did not receive any requests to address the Board about 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 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;

Matthew Scoggins, General Counsel

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

Matthew Scoggins, 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

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: 09-34-19  
Rule ID(s): 9251  
File Date: 9/30/19  
Effective Date: 12/29/19

**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
1720-02-05	Student Code
Rule Number	Rule Title
1720-02-05-.01	Introduction
1720-02-05-.02	Definitions
1720-02-05-.03	Jurisdiction
1720-02-05-.04	Standards of Conduct
1720-02-05-.05	Residence Hall Inspections
1720-02-05-.06	Due Process, Student Rights, and Student Organization Rights
1720-02-05-.07	Student Conduct Hearing Procedures
1720-02-05-.08	Penalties
1720-02-05-.09	No Contact Directive
1720-02-05-.10	Interim Suspension

**RULES OF**  
**THE UNIVERSITY OF TENNESSEE AT CHATTANOOGA**

**CHAPTER 1720-02-05**  
**STUDENT CODE OF CONDUCT**

**TABLE OF CONTENTS**

<u>1720-02-05-.01</u>	<u>Preamble</u>	<u>1720-02-05-.09</u>	<u>Student Conduct Board Hearings</u>
<u>1720-02-05-.02</u>	<u>Definitions</u>	<u>1720-02-05-.10</u>	<u>Disciplinary Sanctions</u>
<u>1720-02-05-.03</u>	<u>Jurisdiction and Application</u>	<u>1720-02-05-.11</u>	<u>Appeals</u>
<u>1720-02-05-.04</u>	<u>Standards of Conduct</u>	<u>1720-02-05-.12</u>	<u>Conclusion of the Student Conduct Process</u>
<u>1720-02-05-.05</u>	<u>Due Process Rights</u>	<u>1720-02-05-.13</u>	<u>Interim Actions</u>
<u>1720-02-05-.06</u>	<u>Student Conduct Process – Initial and Pre-Resolution Stages</u>	<u>1720-02-05-.14</u>	<u>Student Parking Appeals Board</u>
<u>1720-02-05-.07</u>	<u>Student Conduct Process – Methods of Resolution of Charges</u>	<u>1720-02-05-.15</u>	<u>Student Conduct Records</u>
<u>1720-02-05-.08</u>	<u>Hearing Officer Hearings</u>	<u>1720-02-05-.16</u>	<u>Amnesty for Good Samaritans and Impaired Students</u>

**1720-02-05-.01 PREAMBLE.**

- (1) Students at the University of Tennessee at Chattanooga ("University") 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 and in compliance with University rules and policies. The University has established the Student Code of Conduct ("Code") in order to advance the mission of the University by maintaining a safe and secure learning environment, 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 institutional integrity and property, encouraging students to engage in conduct that brings credit to themselves and to the University, and ensuring that each student who matriculates at the University graduates ready to contribute to society as an ethical and law-abiding individual.
- (2) The University's behavioral standards are set forth in the Code. Students who engage in conduct in violation of the Code are subject to University disciplinary sanctions. The University investigates and resolves alleged violations of the Code through the student conduct process and utilizes the process to promote learning and the development of 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.
- (3) Primary authority and responsibility for the Code is delegated to the Vice Chancellor for Student Affairs, who has delegated certain authority and responsibility for administration and enforcement of the Code to the Office of Student Conduct.
- (4) The University is committed to respecting students' constitutional rights. Nothing in this Chapter is intended or will be interpreted in a manner that restricts a student's constitutional rights, including, but not limited to, a student's right to freedom of speech and freedom of assembly.
- (5) Students are responsible for being knowledgeable about and complying with the Code, applicable academic catalogues (undergraduate or graduate), and all other University rules, policies, and procedures.

Authority: T.C.A. § 49-9-209(e) and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

## **1720-02-05-.02 DEFINITIONS.**

The following words, terms, or phrases, when used in the Code, shall have the following meanings:

- (1) Advisor: A person who provides assistance to a Complainant or Respondent during the student conduct process, as provided under Section .05(3) of this Chapter.
- (2) Business day: An official workday during which the University conducts business. Typically, a business day is a weekday (Monday through Friday), excluding any weekdays designated by the University as a holiday or in which the University is administratively closed. Each business day commences at 8:00 a.m. and ends at 5:00 p.m.
- (3) Chancellor: The University's chief executive officer to whom the President of the University of Tennessee system has delegated primary responsibility for administration of University operations, policies, and procedures.
- (4) Code: The Student Code of Conduct of the University of Tennessee at Chattanooga, as set forth under this Chapter.
- (5) Complainant: Any person, group, or organization that may have been subjected to conduct that violates the Code, regardless of whether that person, group, or organization makes a complaint or reports an alleged violation of the Code to the University.
- (6) Designee: A University official or office designated with the authority to carry out a duty or role on behalf of another University official or office.
- (7) Faculty: A University employee who holds faculty rank and whose primary appointment is to engage in academic instruction, research, or service.
- (8) Formal Hearing: A University hearing before a fair and impartial decision-maker in which a Respondent may contest charges of Code violations and/or disciplinary sanctions issued against the Respondent, as provided under Section .07(1) of this Chapter.
- (9) 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 its truth.
- (10) Hearing Officer: A University employee designated by the Office of Student Conduct to conduct a Preliminary Meeting, as provided under Section .06(3) of this Chapter, or to conduct and serve as the decision-maker in a Hearing Officer Hearing, as provided under Section .08 of this Chapter.
- (11) Hearing Officer Hearing: A type of Formal Hearing in which a Hearing Officer serves as the decision-maker, as provided under Section .08 of this Chapter.
- (12) Member of the University community: Any person who is a student, faculty member, staff employee, campus visitor, or participant in a University-sponsored or University-affiliated activity, or any organization that participates in a University-sponsored or University-affiliated activity.
- (13) Notice: Notice given in writing and transmitted by one (1) or more of the following: (i) e-mail to a student's University-issued e-mail account; (ii) United States mail, (iii) courier service, and/or (iv) hand-delivery to the address the University's Records Office has on file for the student. When a notice is transmitted by e-mail, the notice is effective on the date the e-mail is sent. E-mail to a student's University-issued e-mail address is an official method of communication used by the University for student conduct matters. 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.

- (14) Office of the Dean of Students: The University office designated with primary responsibility for the administration of the Office of Student Conduct. The Office of the Dean of Students may act as or on behalf of the Office of Student Conduct.
- (15) Office of Student Conduct: The University office designated with primary responsibility for administering and enforcing the Code and implementing student conduct-related rules, policies, procedures, training, and education.
- (16) Possession: Direct, indirect, or communal 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 a reasonable presumption could be made that one had possession of the substance or property.
- (17) Relevant information: Information having any tendency to make the existence of any fact that is of consequence to determining whether a Respondent violated the Code more probable or less probable than it would be without the information.
- (18) Respondent: A student who has been charged with violating the Code and/or whose alleged misconduct is being investigated by the Office of Student Conduct.
- (19) Staff: Any full-time or part-time University employee not primarily engaged in academic instruction, research, or service, who holds either an exempt or non-exempt position with or without administrative, executive, or managerial responsibilities, excluding student employees of the University.
- (20) Student: A person who:
  - (a) Is admitted, enrolled or registered for study at the University, either full-time or part-time, pursuing undergraduate, graduate, professional, and/or non-degree courses; or
  - (b) Has completed a preceding academic term at the University and is eligible for re-enrollment without re-applying for admission and/or otherwise has a continuing relationship with the University; or
  - (c) Attended the University during a previous academic term and engaged in conduct in violation of the Code during his or her time of enrollment; or
  - (d) Is admitted to the University and later matriculated at the University, and committed conduct in violation of the Code during the application process or during the period of time between admission and matriculation at the University.

Except where explicitly provided otherwise in this Code, the term "student" shall also refer to student organizations.

- (21) Student Conduct Board: A hearing board consisting of students, faculty, and staff appointed by the Office of the Dean of Students (or designee), which serves as the decision-maker in a Student Conduct Board Hearing, as provided under Section .09 of this Chapter.
- (22) Student Conduct Board Chairperson: A University employee appointed by the Office of the Dean of Students (or designee) to preside over and facilitate a Student Conduct Board Hearing.
- (23) Student Conduct Board Hearing: A type of Formal Hearing in which a Student Conduct Board serves as the decision-maker, as provided under Section .09 of this Chapter.

- (24) Student conduct process: The processes and procedures for resolving alleged violations of the Code as set forth in University rules.
- (25) Student conduct record: The collective printed or electronic record of any cases involving alleged violations of the Code by a student. A student conduct record may include, without limitation, incident report(s), correspondence, investigation report(s), interview records, demographic information, evidence, hearing records and recordings, and the student's conduct history.
- (26) Student organization: An organization, club, fraternity, sorority or other group whose membership is composed of University students and which is formally registered and recognized by the University according to University rules, or which has submitted a pending application for registration with the University according to University rules.
- (27) UAPA: The Uniform Administrative Procedures Act, Tenn. Code Ann. § 4-5-101 *et seq.*
- (28) UAPA Administrative Judge: A hearing officer who presides over and serves as the decision-maker in a UAPA Hearing.
- (29) UAPA Hearing: A type of Formal Hearing conducted by a UAPA Administrative Judge in accordance with Chapter 1720-01-05 and the UAPA.
- (30) University: The University of Tennessee at Chattanooga.
- (31) University-affiliated activity: Any activity, on or off University-controlled property, that is initiated, aided, authorized, sponsored, or supervised by the University.
- (32) University-controlled property: All land, buildings, facilities, grounds, structures, or any other property owned, leased, used, maintained, or operated by the University. For purposes of this rule, University-controlled property includes all streets, alleys, sidewalks, and public ways abutting such property. University-controlled property also includes, but is not limited to, computers and network systems owned, maintained, controlled, or funded by the University.
- (33) University official: A University employee when acting in the course and scope of his or her employment duties.
- (34) Vice Chancellor for Student Affairs: The University's chief student affairs officer to whom the Chancellor has delegated primary authority and responsibility for the administration of the Code.
- (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, any firearm (loaded or unloaded); real firearm or device that would appear to a law enforcement officer to be a real firearm; ammunition; electronic control device (including, but not limited to, a Taser gun or stun gun); device designed to discharge an object (including, but not limited to, a BB gun, air/CO<sup>2</sup> gun, pellet gun, potato gun, paintball gun, or slingshot), excluding water guns; dangerous chemical (including, but not limited to, tear gas or oleoresin capsicum), explosive or explosive device, including a substance or combination of substances possessed or prepared for producing a visible or audible effect by combustion, explosion, deflagration or detonation (including, but not limited to, a bomb, grenade, or firework); martial arts weapon; bow and arrows; metal knuckles; nightstick; blackjack; dirk; knife with a fixed blade longer than four (4) inches (not including an ordinary eating utensil); switchblade, dagger, and sword. The term "weapon" does not include an ordinary pocket knife that folds; an available over-the-counter chemical repellent for self-defense (including, but not limited to, mace); or an instrument used solely for personal hygiene, preparation of food, maintenance, University-related instruction, or University employment-related duties.

Authority: T.C.A. § 49-9-209(e); T.C.A. § 49-7-1702(1); T.C.A. § 49-7-1703(c); T.C.A. § 4-5-101 et seq. and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

### **1720-02-05-.03 JURISDICTION AND APPLICATION.**

- (1) Jurisdiction. The Code applies to the conduct of a student that occurs on University-controlled property. With respect to conduct that does not occur on University-owned property, the University has the discretion to discipline a student for conduct in violation of the Code if the student's conduct adversely affects the interests of the University, including, without limitation, when the conduct:
  - (a) Occurs during or in connection with a University-affiliated activity, including, without limitation, an overseas study program, clinical or field placement, internship, or in-service experience;
  - (b) Consists of academic dishonesty or research misconduct;
  - (c) Is prohibited by local, state, or federal law;
  - (d) Involves another member of the University community; or
  - (e) Threatens, or indicates that the student may pose a threat to, the health or safety of the student or other person, or the security of any person's property, including, without limitation, alcohol-related misconduct, drug-related misconduct, arson, battery, fraud, hazing, participation in group violence, sexual misconduct, relationship violence, stalking, and theft.
  
- (2) Time Period of Application to Students. The Code applies to a student's conduct from the time the student applies for admission to the University through the entire time that the student is a candidate for and/or is awarded a degree from the University (even if a student's conduct which violates the Code is not discovered by the University until after the University awards a degree to the student). The Code applies to a student's conduct that occurs during the academic year, between semesters, and during periods between terms of actual enrollment at the University.
  
- (3) Conduct Attributable to Student Organizations. Each student organization is responsible for conduct fairly attributable to the student organization. A determination that conduct is fairly attributable to a student organization does not preclude holding student members of the student organization accountable for acts committed in relation to the student organization's conduct. The chief student officer of the student organization (e.g., president or equivalent) or his or her designee will serve as the representative of the student organization during any proceedings against the student organization under the Code. In determining whether misconduct in violation of the Code is fairly attributable to a student organization, the University will consider the following factors:
  - (a) Whether one (1) or more officers of the student organization had prior knowledge that the misconduct was reasonably likely to occur and failed to take reasonable preventative or corrective action, failed to attempt to stop known misconduct while it was occurring, and/or helped to plan, promote, or carry out the misconduct.
  
  - (b) Whether the misconduct occurred in connection with an activity: (i) 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; (ii) related to initiation into, admission into, affiliation with, or as a condition for continued membership in the student organization; and/or (iii) advertised, promoted, or publicized in such a way that a reasonable person 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 or alumni acting on the student organization's behalf.
- (d) Whether a member of the student organization attempted to conceal the activity connected with the misconduct or concealed the misconduct of another member of the student organization.
- (4) Relation to Criminal and Civil Legal Proceedings. The Code has been adopted in furtherance of the University's interests and serves to supplement, rather than substitute for, the enforcement of criminal and civil law. Accordingly, a Respondent may be charged with violating the Code for conduct that also constitutes a violation of criminal or civil law without regard to whether criminal or civil legal proceedings have been initiated against the Respondent. Disciplinary action for student conduct in violation of the Code may be carried out prior to, simultaneously with, or following criminal or civil proceedings regarding the same conduct. A Respondent charged with violating the Code may not challenge University proceedings in the student conduct process on the grounds that a criminal or civil legal proceeding (or another University proceeding) regarding the same misconduct is pending or has been dismissed, or otherwise that criminal charges or civil claims regarding the same misconduct have been adjudicated, settled and/or reduced. When appropriate, the University may refer student conduct matters involving violations of the law to federal, state, or local authorities for prosecution.
- (5) Misconduct Not Excused by Intoxication or Impairment. The intoxication or impairment of a student by alcohol, drugs, or other substances will not diminish or excuse any conduct in violation of the Code that the student commits while intoxicated or impaired, except as provided under Section .16 of this Chapter.
- (6) Concurrent Honor Code and Non-Honor Code Violations of the Code. Notwithstanding anything in this Chapter to the contrary, allegations of violations of Section .04(1) of this Chapter will be resolved in accordance with the Honor Code procedures under Chapter 1720-02-01. In cases involving allegations of both Honor Code violations and non-Honor Code violations of the Code, the alleged Honor Code violations will be resolved in accordance with the Honor Code procedures under Chapter 1720-02-01 separately from resolution of the alleged non-Honor Code violations, which will be resolved pursuant to the Code procedures under this Chapter. In such cases, disciplinary sanctions may be issued against the Respondent for any Honor Code violations separate from and additional to disciplinary sanctions issued for any non-Honor Code violations of the Code.
- (7) Violations of Professional Standards or Ethics. Graduate or professional programs within the University may take separate and independent action against students for alleged violations of professional and/or ethical standards using procedures other than those contained in the Code.
- (8) Effect on Coursework. Coursework performed by a Respondent during the student conduct process will be considered conditional. Credit for such coursework may be affected, delayed, denied, and/or revoked based on a finding of a Code violation and/or disciplinary sanctions imposed against the Respondent under the Code. In addition, subject to the other provisions of the Code, a delay in the granting of a degree or diploma may be imposed, or a degree that is awarded prior to a decision under the Code may be revoked.
- (9) Withdrawal During the Student Conduct Process. If a Respondent voluntarily withdraws from the University before the conclusion of the student conduct process, the Office of Student Conduct retains the right to investigate and resolve the allegations against the Respondent as a condition of the Respondent being allowed to re-enroll in the University. A Disciplinary Hold on the Respondent's record, as provided under Section .13(2) of this Chapter, may be implemented or remain in place after the Respondent withdraws in order to enforce this Section .03(8).

(10) Time Extensions and Rescheduling: Any time period specified under the Code may be extended for good cause at the discretion of the Office of Student Conduct. Any hearing or meeting described in the Code may be rescheduled for good cause at the discretion of the Office of Student Conduct.

Authority: T.C.A. § 49-9-209(e) and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

#### **1720-02-05-.04 STANDARDS OF CONDUCT.**

All students are prohibited from engaging in the following:

- (1) Academic Dishonesty/Honor Code Violation: Cheating, plagiarism, or any other act of academic dishonesty, including, but not limited to, an act in violation of the Honor Code.
- (2) Providing False Information: Providing false information to a University official.
- (3) Misuse of Information in Connection with a University Investigation or Hearing: Falsifying, distorting, misrepresenting, or withholding information in connection with a University investigation or hearing, except for the withholding of information as provided under Section .05(1)(d) and Section .05(2)(c) of this Chapter.
- (4) Misuse of Records, Identification, and/or Documents: Forging, altering, destroying, falsifying, or misusing records, identification, or documents, whether in print or electronic form.
- (5) Harm and/or Endangerment: Causing physical harm to any person, including oneself; endangering the health, safety, or welfare of any person, including oneself; engaging in conduct that causes a reasonable person to fear harm to his or her health, safety, or welfare; or making an oral or written statement that a 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, pervasive, and objectively offensive, that it effectively bars 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 including, but not limited to, mere insulting or offensive speech.
- (7) Sexual Misconduct, Relationship Violence, Stalking and/or Retaliation: Engaging in conduct that violates the University's Policy on Sexual Misconduct, Relationship Violence, Stalking, and Retaliation.
- (8) Invasion of Privacy: Invasion of another person's privacy when that person has a reasonable expectation of privacy, including, but not limited to, by 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 a shower, locker rooms or restrooms. The storing, sharing, and/or distributing of such unauthorized recordings by any means is also prohibited.
- (9) Theft, Misappropriation and/or Unauthorized Possession/Sale: Theft, misappropriation, unauthorized possession, or unauthorized sale of private or public property, including but not limited to, University-controlled property.
- (10) Vandalism: Vandalizing, destroying, damaging, engaging in conduct that reasonably could cause damage to, or misusing private or public property, including but not limited to, University-controlled property.

- (11) Hazing: Any intentional or reckless act on or off University-controlled property by one (1) student, acting alone or with others that is directed against any other student, that endangers the mental or physical health, safety, or welfare of that student, or that 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.
- (12) 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.
- (13) 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.
- (14) 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.
- (15) Arson and/or 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.
- (16) Unauthorized Possession and/or Access to University Property: Possessing, using, or duplicating University keys, access cards, parking permits, or identification cards without authorization; or possessing, using, or entering University-controlled property without authorization.
- (17) Misuse of University Information and/or Technology: Theft, misuse, or unauthorized use of information technology facilities, resources, or access codes, including, but not limited to: 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 employee, 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 rules or policies on the acceptable use of information technology resources.
- (18) Unauthorized Use of Weapons and Related Misconduct: Possessing, 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 or her designee) of the University Police Department 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.
- (19) Alcohol-Related Misconduct: Consuming, manufacturing, possessing, distributing, dispensing, or selling alcohol or alcohol paraphernalia, or being under the influence of alcohol, on University-controlled property or in connection with a University-affiliated activity, unless expressly permitted by University rules or policy.
- (20) Violation of Federal, State, or Local Alcohol Laws: Consuming, manufacturing, possessing, distributing, dispensing, or selling alcohol or alcohol paraphernalia, or being under the influence of alcohol, if prohibited by federal, state, or local law.

- (21) Providing Alcohol to Minors: Providing alcohol to a person younger than twenty-one (21) years of age, unless permitted by law.
- (22) Drug-Related Misconduct: Using, manufacturing, possessing, distributing, selling, or dispensing drugs or drug paraphernalia, or being under the influence of drugs, if prohibited by federal, state, or local law; using or possessing a prescription drug if the prescription is not issued to the student using or in possession of the prescription drug; or distributing or selling a prescription drug to a person to whom the prescription was not originally issued.
- (23) Obstruction or Disruption of University Activities: 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. In no event shall this rule be construed to discipline a student for speech protected by the First Amendment to the United States Constitution.
- (24) Failure to Comply with University Request or Directive: Failing to respond to a request to report to a University administrative office; failing to comply with a lawful directive of a University official or other public official acting within the scope of his or her duties, except as provided under Section .05(1)(d) and Section .05(2)(c) of this Chapter; or failing to identify oneself to a University official or other public official acting within the scope of his or her duties when requested to do so.
- (25) Failure to Pay Financial Obligation: Failing to pay a bill, account, or other financial obligation to the University.
- (26) Failure to Appear at Hearing: Failing to appear at a University hearing, including, but not limited to, a Formal Hearing or a hearing related to alleged violations of the Honor Code, following a request to appear either as a party or as a witness.
- (27) 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, including, without limitation, any act or omission constituting "retaliation" under the University's Policy on Sexual Misconduct, Relationship Violence, Stalking, and Retaliation. Retaliation violates the Code regardless of whether or not the underlying allegation of a violation of the Code is ultimately found to have merit. Retaliation can include, without limitation: (i) 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 (ii) an act or omission committed by a student through a third party.
- (28) Violation of Housing & Residence Life Policies: Violating any obligations under a University Housing & Residence Life contract for University residential housing and/or any policies under the Housing & Residence Life Student Handbook.
- (29) Violation of Other University Rule, Policy, or Procedure: Violating any University rule, policy, or procedure other than the Code, including, without limitation, University rules or policies relating to use of University facilities, smoking, the acceptable use of information technology resources, research misconduct, University libraries, dining services, parking or transportation, University identification card use, and registered student organizations.
- (30) Violation of Federal, State, or Local Law: Committing an act that is prohibited by federal, state, or local laws, regulations, and/or ordinances.
- (31) Attempt to Commit or Accessory to a Violation: Attempting to commit a violation of a Standard of Conduct set forth under this Section .04 or being an accessory to the commission of an act or attempted act in violation of a Standard of Conduct set forth under this Section .04.
- (32) Violation of University Action: Violating the terms of an interim action under Section .13 of this

Chapter (including, but not limited to, a no-contact directive, interim restriction, or interim suspension); Behavioral Agreement; Resolution Agreement, Alternative Resolution Agreement, disciplinary sanction; or restriction, sanction, or condition of enrollment or re-enrollment imposed by the University.

Authority: T.C.A. § 49-9-209(e); T.C.A. § 49-7-123(a)-(b); T.C.A. § 49-7-1702(3); T.C.A. § 49-7-2406(a)-(b); and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

#### **1720-02-05-.05 DUE PROCESS RIGHTS AND CONFLICTS OF INTEREST.**

##### (1) Rights of the Respondent.

A Respondent will have the following rights during the student conduct process:

- (a) The right to a prompt, thorough, and equitable investigation.
- (b) The right to meet with the Office of Student Conduct to ask questions and receive information about the student conduct process, including, without limitation, the status of an investigation.
- (c) The right to be informed of all charges in writing. The date, time, and place of occurrence of the alleged Code violation(s) will be stated in the written notice of charges.
- (d) The right to remain silent in any investigation, meeting, or hearing.
- (e) The right to a fair and equitable hearing.
- (f) The right to the presumption of innocence (i.e., the University has the burden of presenting information demonstrating that it is more likely than not that the Respondent violated a Standard of Conduct).
- (g) The right to receive notice of hearings at which the Respondent may be present.
- (h) The right to access any information or documents that will be used during a hearing, unless prohibited by law.
- (i) The right to challenge, for good cause, the fairness and/or impartiality of any Hearing Officer, Student Conduct Board Chairperson, Student Conduct Board member, or UAPA Administrative Judge. The Vice Chancellor for Student Affairs (or his or her designee) will decide on challenges to Hearing Officers or Student Conduct Board Chairpersons. The Student Conduct Board Chairperson will decide on challenges to Student Conduct Board members. Challenges to UAPA Administrative Judges will be decided according to the UAPA Hearing procedures under Chapter 1720-01-05.
- (j) The right to challenge all charges and testimony against the Respondent; to present witnesses and other evidence; and to challenge the admissibility of evidence.
- (k) The right not to be questioned directly by the Complainant during a hearing.
- (l) The right to be informed in writing of the decision of the decision-maker in a case, and if applicable, the proper procedure for appealing the decision.
- (m) The right to appeal the decision of the decision-maker in a Hearing Officer Hearing, Student Conduct Board Hearing, or UAPA Hearing.

(n) The right to be assisted by an advisor during all stages of the student conduct process in accordance with Section .05(3) of this Chapter.

(2) Rights of the Complainant.

A Complainant will have the following equivalent rights granted to a Respondent during the student conduct process, unless otherwise provided by federal or state law:

(a) The right to a prompt, thorough, and equitable investigation.

(b) The right to meet with the Office of Student Conduct to ask questions and receive information about the student conduct process, including, without limitation, the status of an investigation.

(c) The right to remain silent in any investigation, meeting, or hearing.

(d) The right to receive notice of any hearings at which the Complainant may be present.

(e) The right to access any information or documents that may be used during a hearing, unless prohibited by law.

(f) The right to challenge, for good cause, the fairness and/or impartiality of any Hearing Officer, Student Conduct Chairperson, Student Conduct Board member, or UAPA Administrative Judge. The Vice Chancellor for Student Affairs (or his or her designee) will decide on challenges to Hearing Officers or Student Conduct Board Chairpersons. The Student Conduct Board Chairperson will decide on challenges to Student Conduct Board members. Challenges to UAPA Administrative Judges will be decided according to the UAPA Hearing procedures under Chapter 1720-01-05.

(g) The right to challenge all testimony against the Complainant; to present witnesses and other evidence; and to challenge the admissibility of evidence.

(h) The right not to be questioned directly by the Respondent during a hearing, unless otherwise provided by federal or state law.

(i) The right to be informed in writing of the decision of the decision-maker in a case, and if applicable, the proper procedure for appealing the decision.

(j) If applicable and where provided by law or University rules or policy, the right to appeal the decision of the decision-maker in a Hearing Officer Hearing, Student Conduct Board Hearing, or UAPA Hearing.

(k) The right to be assisted by an advisor during all stages of the student conduct process in accordance with Section .05(3) of this Chapter.

(3) Right to an Advisor.

(a) The Complainant and the Respondent each may choose to be assisted by one (1) advisor during all stages of the student conduct process.

(b) The University encourages a Complainant or Respondent who chooses to be assisted by an advisor to consider selecting a University employee who has received training about the student conduct process from the Office of Student Conduct. The Complainant and the Respondent may obtain the names of trained advisors from the Office of Student Conduct. 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. 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, as delays will generally not be granted due to the scheduling conflicts of an advisor.

- (c) 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 Hearing Officer Hearing or Student Conduct Board Hearing. However, in a UAPA Hearing, the Complainant and the Respondent are entitled to be represented by legal counsel at their own expense.
- (4) Restrictions on Participation Imposed by Law. Notwithstanding any provisions of the Code to the contrary, including, without limitation, any provisions in this Section .05, a Complainant will not have the right to attend a meeting or hearing, receive information concerning a case, or otherwise participate in the student conduct case, if such attendance, receipt of information, or participation would violate federal or state law.
- (5) Rights in Sexual Misconduct, Relationship Violence, Stalking, and/or Retaliation Cases.
- Notwithstanding any provisions of the Code to the contrary, including, without limitation, any provisions in this Section .05, in cases involving alleged conduct that violates the University's Policy on Sexual Misconduct, Relationship Violence, Stalking, and Retaliation:
- (a) The Respondent and the Complainant will have the rights outlined in the University's Policy on Sexual Misconduct, Relationship Violence, Stalking, and 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 laws; and
- (b) The University shall provide the Respondent with notice of the extent to which the University may allow a licensed attorney or other advisor to represent or advise the Respondent in the investigation or student disciplinary proceeding.
- (6) 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) In cases involving alleged conduct that violates the University's Policy on Sexual Misconduct, Relationship Violence, Stalking, and Retaliation, the student conduct process must include protections for the Respondent analogous to, and no less protective than, the conflict of interest provisions of Tenn. Code Ann. § 4-5-303. Notwithstanding the preceding sentence: (i) an attorney for the University is allowed to provide legal advice to multiple University employees who serve in different roles in the student conduct process; and (ii) the University is allowed to provide the Complainant with equivalent rights as the Respondent during the student conduct process.

Authority: T.C.A. § 49-9-209(e); T.C.A. § 49-7-1703(a); T.C.A. § 49-7-1704(a) and (d); T.C.A. § 4-5-101 et seq.; and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

## 1720-02-05-.06 STUDENT CONDUCT PROCESS – INITIAL AND PRE-RESOLUTION STAGES.

### (1) Initiation of the Student Conduct Process.

- (a) The University may initiate the student conduct process on the basis of written allegations received from any source including, without limitation, students, faculty members, staff employees, or law enforcement agencies. The University may also initiate the student conduct process in the absence of written allegations if the University becomes aware, through other means, of potential Code violations committed by a student.
- (b) Upon receipt of written allegations or other information concerning potential Code violations, the Office of Student Conduct, on behalf of the University, will review the information and determine whether or not to initiate the student conduct process. The Office of Student Conduct's determination of whether to initiate the student conduct process generally will be based on: (i) a preliminary investigation by the Office of Student Conduct or other University official(s) into the allegations or information received; (ii) a determination of whether the alleged conduct falls within the jurisdiction of the Code; and (iii) a determination of whether the alleged conduct, if true, violated the Code.

### (2) Notice of Allegations.

- (a) If the Office of Student Conduct determines to initiate the student conduct process, it will provide a Notice of Allegations to the Respondent.
- (b) The Notice of Allegations will:
  - 1. Inform the Respondent that the University has received allegations that the Respondent has violated the Code and that the University has begun or will begin an investigation of the alleged violations;
  - 2. Provide a brief description of the alleged Code violation(s);
  - 3. Notify the Respondent of his or her right to be assisted and/or supported by an advisor at all stages of the student conduct process;
  - 4. Instruct the Respondent to contact the Office of Student Conduct within five (5) business days of the effective date of the notice to schedule a Preliminary Meeting as provided under Section .06(3) of this Chapter;
  - 5. Inform the Respondent of the consequences for failure to schedule or appear at a Preliminary Meeting, as provided under Section .06(3) of this Chapter; and
  - 6. Advise the Respondent to review the Code for information about the student conduct process.

### (3) Preliminary Meeting.

After a Notice of Allegations is issued to a Respondent, a Hearing Officer, appointed by the Office of Student Conduct, will hold a Preliminary Meeting with the Respondent, unless the Respondent fails to schedule a Preliminary Meeting as provided under Section .06(3)(a) of this Chapter or fails to appear at a scheduled Preliminary Hearing as provided under Section .06(3)(b) of this Chapter.

- (a) Failure to Schedule Preliminary Meeting. If the Respondent fails to contact the Office of Student Conduct within five (5) business days of the effective date of the Notice of

Allegations to schedule the Preliminary Meeting, the Respondent waives his or her right to a Preliminary Meeting and the right to select the type of Formal Hearing for resolution of the allegations, unless the Respondent's failure to contact the Office of Student Conduct is excused by the Office of Student Conduct upon a showing of good cause. If the Respondent waives his or her right to a Preliminary Hearing as provided under this Section .06(3)(a) and the Hearing Officer determines that charges should be issued based on the information available, the Hearing Officer will select the type of Formal Hearing for resolution of the charge(s) and provide the Respondent with a Notice of Charges in accordance with Section .06(5) of this Chapter. Notwithstanding any provisions to the contrary in this Section .06(3)(a), in cases in which the Respondent has the right to a UAPA Hearing, the Respondent waives his or her right to a UAPA Hearing only as provided under Section .07(1)(e) of this Chapter.

(b) Failure to Appear at Preliminary Meeting. If the Respondent fails to appear at a scheduled Preliminary Meeting, the Respondent waives his or her right to a Preliminary Meeting and the right to select the type of Formal Hearing for resolution of the allegations, unless the Respondent's failure to appear at the Preliminary Meeting is excused by the Office of Student Conduct upon a showing of good cause. If the Respondent waives his or her right to a Preliminary Hearing as provided under this Section .06(3)(b) and the Hearing Officer determines that charges should be issued based on the information available, the Hearing Officer will select the type of Formal Hearing for resolution of the charge(s) and provide the Respondent with a Notice of Charges in accordance with Section .06(5) of this Chapter. Notwithstanding any provisions to the contrary in this Section .06(3)(b), in cases in which the Respondent has the right to a UAPA Hearing, the Respondent waives his or her right to a UAPA Hearing only as provided under Section .07(1)(e) of this Chapter.

(c) Appearance at Scheduled Preliminary Meeting. If the Respondent appears at a scheduled Preliminary Meeting, the Hearing Officer will conduct the Preliminary Meeting in the following general manner:

1. The Hearing Officer will inform the Respondent of the allegations against the Respondent and the potential disciplinary sanction(s) that could be issued against the Respondent.
2. The Respondent may ask questions and seek clarification about the allegations and any other information regarding the student conduct process.
3. The Hearing Officer will provide the Respondent with an opportunity to respond to the allegations through various means, including, without limitation, the presentation of any information for consideration by the Office of Student Conduct and/or the identification of any witnesses the Respondent believes have relevant information.
4. If the Hearing Officer determines at the Preliminary Meeting that additional investigation is not needed and that charges should not be issued against the Respondent, the Preliminary Meeting will be concluded and the Hearing Officer will provide a Notice of Decision to the Respondent in accordance with Section .12(1) of this Chapter.
5. If the Hearing Officer determines at the Preliminary Meeting that no additional investigation is needed and that charges should be issued against the Respondent, the Hearing Officer will inform the Respondent of the determination, the proposed disciplinary sanction(s) to be issued, and the applicable options available for resolution of the charge(s) provided under Section .07 of this Chapter. The Respondent will then be provided the opportunity to state whether the Respondent wishes to accept responsibility for the charge(s) and the proposed

disciplinary sanction(s), or contest the charge(s) and/or proposed disciplinary sanction(s) in a Formal Hearing.

(i) If the Respondent wishes to accept responsibility for the charge(s) and sanction(s), or otherwise not to contest the charge(s) and sanction(s) in a Formal Hearing, the Respondent may either:

I. Enter into a Resolution Agreement accepting responsibility for the charge(s) and sanction(s) in accordance with Section .07(2) of this Chapter; or

II. Sign a written waiver of Respondent's right to contest the charge(s) and sanction(s) in a Formal Hearing. In such case, the Hearing Officer will provide a Notice of Decision to the Respondent in accordance with Section .12(3) of this Chapter.

(ii) If the Respondent wishes to contest the charge(s) and/or the sanction(s) in a Formal Hearing, the Preliminary Meeting will be concluded and the Respondent will be issued a Notice of Charges in accordance with Section .06(5) of this Chapter, except as provided under Section .08(3) of this Chapter.

6. If the Hearing Officer determines at the Preliminary Meeting that additional investigation is needed before the Hearing Officer determines whether or not charges should be issued against the Respondent, the Preliminary Meeting will be concluded and the Office of Student Conduct will continue its investigation of the allegation(s).

(4) Investigations.

(a) Investigations of alleged violations of the Code will be conducted by the Office of Student Conduct unless another person or organization is designated to serve as the investigator in accordance with University rules or policy.

(b) Investigations will be conducted in a prompt, thorough, ethical, and equitable manner.

(c) When conducting an investigation, the Office of Student Conduct (or other designated investigator) will act as a fair and impartial party rather than as a representative of the person, office, unit, or organization that submitted the allegations.

(d) During an investigation, the Complainant(s), the Respondent(s), witnesses, or any other persons may be interviewed, and other relevant information and documentation will be obtained as applicable. The Office of Student Conduct (or other designated investigator) is not obligated to interview a witness identified by the Complainant or the Respondent if the Office of Student Conduct (or other designated investigator) believes the witness is not likely to possess relevant information, the information from the witness is not likely to lead to the discovery of relevant information, or the information the witness is likely to possess is cumulative of other information already gathered. The Office of Student Conduct (or other designated investigator) may re-interview the Complainant(s), Respondent(s), witnesses, and/or any other person at any time during the investigation in order to obtain additional and/or clarifying information.

(e) Notwithstanding any provisions of the Code to the contrary, including, without limitation, any provisions in this Section .06, the University will investigate and resolve reports of alleged conduct that violates the University's Policy on Sexual Misconduct, Relationship Violence, Stalking, and Retaliation in accordance with the University's Policy on Sexual

Misconduct, Relationship Violence, Stalking, and Retaliation, Title IX of the Education Amendments of 1972, the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, and other applicable laws.

1. Any University employee who investigates reports of alleged violations of the University's Policy on Sexual Misconduct, Relationship Violence, Stalking, and Retaliation shall complete the following at least one (1) time each year:

(i) Training that satisfies the requirements of Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681), the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (compiled in 20 U.S.C. § 1092(f)), and the federal regulations implementing the statutes, as amended, all of which may be satisfied by the training in Section .06(4)(e)1(ii) of this Chapter.

(ii) Training developed or conducted by the Tennessee Law Enforcement Innovation Center for Investigators who perform investigations of sexual misconduct.

(5) Notice of Charges.

(a) If it is determined that a Respondent should be charged with violation of the Code, the Office of Student Conduct will provide the Respondent with a Notice of Charges, unless otherwise provided in this Chapter.

(b) The Notice of Charges will include, without limitation, the following information:

1. A description of the conduct the Respondent is charged with committing, the specific Code violation(s) charged with violating, and the recommended disciplinary sanctions;

2. The types of Formal Hearings available for resolution of the charge(s);

3. That, if the Respondent wishes to contest the charge(s) and/or proposed disciplinary sanction(s), the Respondent must request one (1) of the available Formal Hearing options in writing within five (5) business days of the effective date of the Notice of Charges or otherwise waives the right to contest the charge(s) in a Formal Hearing; and

4. The Respondent's right to be assisted and/or supported by an advisor at all stages of the student conduct process. In cases in which the UAPA requires the University to offer the Respondent a UAPA Hearing, the notice shall notify the Respondent of his or her right to be assisted or represented by legal counsel if the Respondent decides to contest the charge(s) through a UAPA Hearing.

Authority: T.C.A. § 49-9-209(e); T.C.A. § 4-5-101 et seq.; T.C.A. § 49-7-122; T.C.A. § 49-7-1704; and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

#### **1720-02-05-.07 STUDENT CONDUCT PROCESS – METHODS OF RESOLUTION.**

Charges or allegations of violations of the Code may be resolved in one (1) of the following ways:

(1) Resolution by Formal Hearing. A Formal Hearing is a process for resolving charges of Code violations in which the Respondent is provided the opportunity to contest the charges through the

presentation of evidence at a hearing before a fair and impartial decision-maker.

(a) Types of Formal Hearings. Charges may be resolved through one (1) of three (3) types of Formal Hearings, depending on the gravity of the disciplinary sanctions proposed for the charge:

1. Hearing Officer Hearing. A hearing held before a Hearing Officer in accordance with Section .08 of this Chapter. A Hearing Officer Hearing will be offered in every case, except as provided in this Section .07(1)(a)1. Hearing Officer Hearings will not be held for resolution of charge(s) of violations of the University's Policy on Sexual Misconduct, Relationship Violence, Stalking, and Retaliation.

2. Student Conduct Board Hearing. A hearing held before a Student Conduct Board in accordance with Section .09 of this Chapter. A Student Conduct Board Hearing will be offered in every case.

3. UAPA Hearing. A "contested case" hearing under the UAPA held before a UAPA Administrative Judge in accordance with Chapter 1720-01-05. A Respondent has the right to a UAPA Hearing only when the UAPA requires the University to offer a UAPA Hearing as determined by the gravity of the disciplinary sanction(s) proposed for the charge.

(b) Request for Formal Hearing. In order to contest the charge(s) set forth in the Notice of Charges, the Respondent must request in writing a Formal Hearing and the selected type of Formal Hearing using the form(s) provided by the University within five (5) business days of the effective date of the Notice of Charges. A verbal request by the Respondent for a Formal Hearing or of the selected type of Formal Hearing will not constitute a valid request. By selecting a type of Formal Hearing, the Respondent waives the right to contest the charged Code violation(s) through another type of Formal Hearing.

(c) Failure to Contest. If the Respondent fails to request a Formal Hearing in writing within five (5) business days of the effective date of the Notice of Charges, the Respondent waives the right to contest the charge(s), and the Office of Student Conduct may issue a Notice of Decision to the Respondent as provided under Section .12(3) of this Chapter. Notwithstanding the foregoing provisions in this Section .07(1)(c), the Office of Student Conduct may decline to issue a Notice of Decision and permit the Respondent to contest the charge(s) through a Formal Hearing upon a showing of good cause by the Respondent for his or her failure to timely request a Formal Hearing.

(d) Failure to Request Type of Formal Hearing. If, within five (5) business days of the effective date of the Notice of Charges, the Respondent requests a Formal Hearing in writing but fails to request in writing the type of Formal Hearing, the Respondent waives the right to select the type of Formal Hearing for resolution of the charge(s), unless the Respondent's failure to select the type of Formal Hearing is excused by the Office of Student Conduct upon a showing of good cause. If the Respondent waives his or her right to select the type of Formal Hearing as provided under this Section .07(1)(d), the Office of Student Conduct will select the type of Formal Hearing and will provide notice to the Respondent of the type of Formal Hearing selected and the date, time, and place of the hearing.

(e) Waiver of UAPA Hearing. Notwithstanding any provisions in this Chapter to the contrary, in a case in which the UAPA requires that the University offer the Respondent a UAPA Hearing, the Respondent waives his or her right to a UAPA Hearing only if the Respondent: (i) fails to request a Formal Hearing in writing within five (5) business days of the effective date of the Notice of Charges; or (ii) executes a voluntary written waiver of his or her right to a UAPA Hearing. If the Respondent timely requests a Formal Hearing in writing, the University will conduct a UAPA Hearing to resolve the charge(s) unless the Respondent

executes a voluntary written waiver of the Respondent's right to a UAPA Hearing.

- (f) Emergency Ad Hoc Committee Hearing. When, in the judgment of the Chancellor, conditions are such that the functioning of a Hearing Officer Hearing or Student Conduct Board Hearing to resolve Code violation charges is impractical, the Vice Chancellor for Student Affairs may suspend the procedural rules for Hearing Officer Hearings and Student Conduct Board Hearings under this Chapter and appoint an ad hoc committee to hear a student conduct matter. Any such ad hoc committee will follow procedures that will insure the Respondent is provided due process. The decision of the ad hoc committee may be appealed in accordance with Section .11 of this Chapter as if the decision were issued by a Hearing Officer or Student Conduct Board.
- (2) Resolution by Resolution Agreement. At any time during the student conduct process, the Respondent may resolve charges of violations of the Code by entering into a Resolution Agreement with the University.
- (a) By signing a Resolution Agreement, the Respondent: (i) accepts responsibility for the Code violations indicated in the agreement; (ii) agrees to the imposition of the disciplinary sanctions indicated in the agreement; and (iii) waives all rights the Respondent may have to resolve the charges through a Formal Hearing.
  - (b) Subject to Section .07(2)(c) of this Chapter, a Resolution Agreement will not become binding and effective until it is signed by the Respondent and an authorized University official. A Respondent may not revoke or appeal a Resolution Agreement at any time after the Respondent signs the agreement.
  - (c) The Complainant will have the right in certain cases (where provided by law or University rules or policy) to appeal the terms of a Resolution Agreement. In such cases, the procedures under this Section .07(2)(c) will apply. In a case in which the Complainant has the right to appeal the terms of a Resolution Agreement and properly exercises such right, the agreement will not become binding and effective unless and until the issuance of a final decision on appeal upholding the agreement.
    - 1. For a Resolution Agreement entered into between the Respondent and the University in any case in which the UAPA Hearing procedure has not been selected and initiated for resolution of the charge(s), the Office of Student Conduct will provide written notice to the Complainant of the agreement, and the Complainant may appeal the agreement in writing to the Vice Chancellor for Student Affairs within five (5) business days of the effective date of the notice of the agreement. The Vice Chancellor for Student Affairs must either uphold or reject the agreement in its entirety and provide notice of his or her decision to the Complainant and Respondent within ten (10) business days of receipt of the Complainant's appeal. If the Vice Chancellor for Student Affairs upholds the Resolution Agreement, the decision is final and the agreement will become effective and binding. If the Vice Chancellor for Student Affairs rejects the Resolution Agreement, the Office of Student Conduct will continue the student conduct process and resolve the charge(s) against the Respondent in accordance with the Code.
    - 2. For a Resolution Agreement entered into between the Respondent and the University in which the UAPA Hearing procedure has been selected and initiated for resolution of the charge(s), the availability of any appeal of the Resolution Agreement will be determined by the UAPA Administrative Judge under Chapter 1720-01-05.
- (3) Resolution by Alternative Resolution Agreement.

- (a) Proposal of Alternative Resolution. At any time during the student conduct process, allegations or charges of violations of the Code against the Respondent may be resolved through an Alternative Resolution Agreement. 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 an alternative resolution, the Office of Student Conduct shall determine whether an alternative resolution would be appropriate based on the facts and circumstances of the case, and if so, what type of alternative resolution process should be used. In cases involving allegations or charges of violations of the University's Policy on Sexual Misconduct, Relationship Violence, Stalking, and Retaliation, the Title IX Coordinator will make that determination in consultation with the Office of Student Conduct. The process of trying to reach an alternative resolution is voluntary (i.e., neither the Respondent nor a Complainant is required to participate). If an Alternative Resolution Agreement as defined under Section .07(3)(b) is not reached, then the Office of Student Conduct will continue the student conduct process and resolve the allegations or charges against the Respondent in accordance with the Code.
- (b) Alternative Resolution Agreement. An Alternative Resolution Agreement is a written agreement that confirms an agreement to resolve the allegations or charges against the Respondent through an alternative resolution. To be valid, an Alternative Resolution Agreement shall in all cases be signed by the Office of Student Conduct and the Respondent, and shall include a waiver of the Respondent's right, if any, to have a Formal Hearing on the allegations or charges. Prior to the execution of an Alternative Resolution Agreement, if a Complainant has not participated with the Office of Student Conduct in the discussion of an alternative resolution, then the Office of Student Conduct will provide the Complainant with an opportunity to provide a timely objection to the proposed alternative resolution. In appropriate cases, the Office of Student Conduct may request the Complainant to sign the 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) Behavioral Agreement. In cases involving allegations of the Respondent engaging in behavior in the classroom or other areas of campus in violation of the Code, the Office of Student Conduct may request that the Respondent enter into a Behavioral Agreement to remediate and/or prevent recurrence of the alleged behavior. Under a Behavioral Agreement, the Respondent is allowed to continue participating in University programs and services with limited restrictions and/or conditions as provided under the agreement. Any violation of a Behavioral Agreement will be considered a violation of the Code and may result in disciplinary sanctions against the Respondent.
- (5) Resolution of Title IX-Related Cases. Notwithstanding any provisions of the Code to the contrary, including, without limitation, any provisions in this Section .07, cases involving charges of violations of the University's Policy on Sexual Misconduct, Relationship Violence, Stalking, and Retaliation will be resolved in accordance with the University's Policy on Sexual Misconduct, Relationship Violence, Stalking, and Retaliation, subject to Title IX of the Education Amendments of 1972, the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, and other applicable laws.

Authority: T.C.A. § 49-9-209(e); T.C.A. § 4-5-101 *et seq.*; T.C.A. § 49-7-1704; and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

#### **1720-02-05-.08 HEARING OFFICER HEARINGS.**

A Hearing Officer Hearing is held before and conducted by a Hearing Officer. The Hearing Officer serves as the decision-maker in determining whether the Respondent is responsible for the charged Code

violation(s) and the disciplinary sanction(s), if any, to be imposed.

- (1) Hearing Officer. A Hearing Officer is a University employee selected by the Office of Student Conduct. Hearing Officers are trained by the Office of Student Conduct to conduct Hearing Officer Hearings in accordance with the Code.
- (2) Fairness & Impartiality. The Hearing Officer will be fair and impartial, and any party to a Hearing Officer Hearing has the right to challenge the fairness or impartiality of the Hearing Officer. Any Hearing Officer lacking fairness or impartiality will recuse himself or herself or may, for good cause and at the discretion of the Vice Chancellor for Student Affairs (or his or her designee), be removed from serving as Hearing Officer for the hearing.
- (3) Notice. If the Respondent timely requests a Hearing Officer Hearing in accordance with Section .07(1)(b) of this Chapter, the Hearing Officer will send the Respondent (and the Complainant, where provided by law or University rules or policy) notice of the time, place, and date of the hearing at least five (5) business days in advance of the date of the hearing. Notwithstanding any provisions in the Code to the contrary, including this Section .08(3), and except in cases involving a Complainant, if the Respondent requests at the Preliminary Meeting to hold a Hearing Officer Hearing immediately following the Preliminary Meeting, the Hearing Officer may agree to hold the hearing as requested. In such case, a Notice of Charges and a notice of hearing will not be provided to the Respondent.
- (4) Hearing Procedure. A Hearing Officer will conduct a Hearing Officer Hearing in accordance with the following general procedures and rules:
  - (a) The hearing will be closed to the public.
  - (b) The Hearing Officer will determine all procedural questions.
  - (c) The Respondent (and the Complainant in certain cases, as provided by law or University rules or policy) will be considered a party to the proceeding.
  - (d) Each party (and their respective advisors, if any) will be allowed to attend the portion of the hearing during which questioning is conducted and information is received by the Hearing Officer.
  - (e) Each party will be afforded a full and fair opportunity to present all evidence, including witness testimony, that reasonably relates to the charge or action at issue.
  - (f) The Hearing Officer may limit the presentation of evidence which is irrelevant or unreasonably repetitious or voluminous.
  - (g) The Hearing Officer will consider all evidence presented and give due consideration to the credibility or weight of the information presented. Technical rules of evidence, such as evidentiary rules applicable to civil or criminal court proceedings, will not apply.
  - (h) The Hearing Officer will apply the preponderance of the evidence standard in determining whether or not the Respondent is responsible for the charged Code violation(s).
  - (i) An appropriate record of the hearing proceedings will be made. An audio or video record may be made of the hearing. Defects in the record will not invalidate the proceedings.
  - (j) Following the conclusion of the hearing, the Hearing Officer will provide each party with a Notice of Decision setting forth the Hearing Officer's decision on responsibility and, if applicable, the disciplinary sanctions to be issued against the Respondent and their effective date.

- (5) Multiple Respondents. In cases involving more than one (1) Respondent, the Hearing Officer has the discretion to hold one (1) hearing for all of the Respondents or separate hearings for each Respondent. Any Respondent may, prior to the hearing, request that his or her hearing be conducted separately from the other Respondent(s). Such a request must be made in writing to the Hearing Officer using the form(s) provided by the University. The Hearing Officer will decide whether or not to grant such a request, and the Hearing Officer's decision will be final.
- (6) Failure to Appear. If proper notice of the Hearing Officer Hearing is provided to the Respondent in accordance with Section .08(3) of this Chapter but the Respondent fails to appear at the hearing, the Respondent waives the right to contest the charge(s), and the Office of Student Conduct may issue a Notice of Decision to the Respondent in accordance with Section .12(3) of this Chapter. Notwithstanding the provisions of this Section .08(6), the Office of Student Conduct may decline to issue a Notice of Decision and permit the Respondent to contest the charge(s) through a Hearing Officer Hearing upon a showing of good cause by the Respondent for his or her failure to appear.
- (7) Prohibition of Complainant's Participation. Notwithstanding any provisions of the Code to the contrary, including, without limitation, in this Section .08, a Complainant or other student not designated as a Respondent will not have the right to attend or participate in a Hearing Officer Hearing or otherwise receive information concerning the hearing if such attendance, participation, or receipt of information would violate federal or state law.
- (8) Appeal. The decision of the Hearing Officer may be appealed to the Vice Chancellor for Student Affairs in accordance with Section .11 of this Chapter.

Authority: T.C.A. § 49-9-209(e) and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

#### **1720-02-05-.09 STUDENT CONDUCT BOARD HEARINGS.**

A Student Conduct Board Hearing is held before a Student Conduct Board and chaired by a Student Conduct Board Chairperson. The Student Conduct Board serves as the decision-maker in determining whether the Respondent is responsible for the charged Code violation(s) and the disciplinary sanction(s), if any, to be imposed.

- (1) Student Conduct Board Chairperson. The Student Conduct Chairperson is appointed by the Office of the Dean of Students (or designee) to preside over and facilitate a Student Conduct Board Hearing to ensure that the hearing is conducted in accordance with the Code. Except as provided under Section .09(7)(j) of this Chapter, the Student Conduct Board Chairperson will not vote on the issues to be decided by the Student Conduct Board. The Student Conduct Board Chairperson will be a University employee trained by the Office of Student Conduct on the procedures for conducting a Student Conduct Board Hearing in accordance with the Code.
- (2) Student Conduct Board. The Student Conduct Board is a panel of appointed students, faculty, and staff, that serves as the decision-maker for the hearing.
  - (a) For each Student Conduct Board Hearing, the Office of the Dean of Students (or designee) will appoint members to serve on the Student Conduct Board from an annually-selected pool of qualified students, faculty members, and staff employees. In order to be qualified for the pool, a student, faculty member, or staff employee must be in good standing with the University. All persons appointed to serve on the board will be trained by the Office of Student Conduct (or other University officials) on their duties and responsibilities as board members under the Code.
  - (b) The Student Conduct Board empaneled ad hoc for each hearing from the pool described under Section .09(2)(a) of this Chapter will consist of one (1) Student Conduct Board

Chairperson and six (6) voting members, with at least one (1) voting student and one (1) voting faculty member or staff employee, unless otherwise provided under Section .09(2)(b)1 and Section .09(2)(b)2 of this Chapter.

1. A hearing may be held before a Student Conduct Board consisting of less than six (6) voting members with the consent of the Respondent (and the Complainant in certain cases as provided by law or University rules or policy).
  2. In cases involving charges of violations of the University's Policy on Sexual Misconduct, Relationship Violence, Stalking, and Retaliation, the Office of the Dean of Students (or designee) will not appoint students to serve on the Student Conduct Board unless both the Complainant and Respondent consent to having students appointed to serve on the Student Conduct Board Hearing for their case.
- (3) Fairness & Impartiality. The Student Conduct Board members, including the Student Conduct Board Chairperson, will be fair and impartial. Any party to a Student Conduct Board Hearing will have the right to challenge the fairness or impartiality of the Student Conduct Board Chairperson or any voting member of the Student Conduct Board. Any voting member of the Student Conduct Board lacking fairness or impartiality will recuse himself or herself, or for good cause and at the Student Conduct Board Chairperson's discretion, be removed from the board. Any Student Conduct Board Chairperson lacking fairness or impartiality will recuse himself or herself, or for good cause and at the discretion of the Vice Chancellor of Student Affairs (or his or her designee), be removed from presiding over the hearing.
- (4) Notice. If the Respondent timely requests a Student Conduct Board Hearing in accordance with Section .07(1)(b) of this Chapter, the Office of Student Conduct will provide the Respondent (and the Complainant in certain cases, where provided by law or University rules or policy) with notice of the time, place, and date of the hearing at least five (5) business days in advance of the date of the hearing.
- (a) In cases involving charges of violations of the University's Policy on Sexual Misconduct, Relationship Violence, Stalking, and Retaliation, at least five (5) business days in advance of the date of the hearing, the Office of Student Conduct will provide the Respondent with notice of the following additional information:
1. The name of each witness the University expects to present at the hearing or may present if the need arises;
  2. The Respondent's right to request a copy of the Office of Student Conduct'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
  3. The Respondent's 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.
- (5) Pre-Hearing Submissions from Parties. At least five (5) business days in advance of the date of the hearing, the Respondent (and the Complainant, where provided by law or University rules or policy), must provide the following information to the Office of Student Conduct:
- (a) The names of all witnesses the party plans to present to the Student Conduct Board and a brief summary of the information that the party reasonably anticipates each witness to provide.

- (b) A copy of all tangible or electronic information that the party plans to present to the Student Conduct Board (including, but not limited to, witness statements, video or audio recordings, photographs, e-mails, text messages, telephone records, medical bills, demonstrative exhibits, etc.). The party is not required to provide actual items of physical evidence (including, but not limited to, a weapon or article of clothing), but instead may provide photographs of such items.
  - (c) A copy of a written statement, if any, that the party wants the Student Conduct Board to consider. A 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 mitigate the alleged Code violation(s) or proposed disciplinary sanction(s).
- (6) Pre-Hearing Review of Information. After notice of the Student Conduct Board Hearing is provided to the Respondent (and the Complainant, where provided by law or University rules or policy) in accordance with Section .09(4) of this Chapter, the Office of Student Conduct will make available to each party the materials submitted by each party and the University upon the request of a party. Notwithstanding any provision to the contrary in this Section .09(6), no less than one (1) business day prior to the hearing, the Office of Student Conduct will make the materials submitted by each party and the University available for review by each party and their respective advisors, the Student Conduct Board Chairperson, and the voting members of the Student Conduct Board. The Office of Student Conduct will notify each party, the Student Conduct Board Chairperson, and the voting members of the Student Conduct Board when the materials are ready for review in the Office of Student Conduct or when the materials will be sent to them electronically. The Office of Student Conduct may redact irrelevant and/or protected information from any materials made available for review.
- (7) Hearing Procedure. The Student Conduct Board Chairperson will conduct a Student Conduct Board Hearing in accordance with the following general procedures and rules:
- (a) The hearing will be closed to the public.
  - (b) The Student Conduct Board Chairperson will determine all procedural questions. The Student Conduct Board Chairperson may be assisted by a procedural advisor appointed by the Office of Student Conduct.
  - (c) The Respondent (and the Complainant in certain cases, where provided by law or University rules or policy) will be considered a party to the proceeding.
  - (d) Each party and their respective advisors will be allowed to attend the portion of the hearing during which questioning is conducted and information is received from the parties or the University. The parties (and their advisors) will not be allowed to attend the portion of the hearing during which deliberations by the Student Conduct Board occur.
  - (e) Each party will be afforded a full and fair opportunity to present an opening statement, any evidence, including witness testimony, that reasonably relates to the charge or action at issue, and a closing statement.
  - (f) The Student Conduct Board Chairperson may bar or limit the presentation of evidence which is not provided to the Office of Student Conduct in advance of the hearing in accordance with Section .09(5) of this Chapter, or which (i) is irrelevant, (ii) unreasonably repetitious or voluminous; or (iii) protected from disclosure under federal, state, or local law.
  - (g) The Student Conduct Board will consider all evidence presented and give due consideration to the credibility or weight of the information presented. Technical rules of

evidence, such as evidentiary rules applicable to civil or criminal court proceedings, will not apply.

- (h) The Student Conduct Board will apply the preponderance of the evidence standard in determining whether or not the Respondent is responsible for the charged Code violation(s).
  - (i) An appropriate record of the hearing proceedings will be made. An audio or video record will be made of the hearing, except for the portion of the hearing in which the Student Conduct Board deliberates and votes on its decision. Defects in the record will not invalidate the proceedings.
  - (j) After all information for consideration has been presented to the Student Conduct Board, the parties (and their advisors, if any) will be excused, and the members of the Student Conduct Board will deliberate and vote on the following issues: (i) whether the Respondent is responsible for the charged Code violation(s) and (ii) the disciplinary sanctions, if any, to be issued. The decision of the board on each issue will be made by simple majority of the voting members' votes. In the event of a tie-vote among the voting members, the Student Conduct Board Chairperson will cast the tie-breaking vote.
  - (k) At the conclusion of the hearing, the Student Conduct Board Chairperson will provide each party with a Notice of Decision setting forth the Student Conduct Board's decision on responsibility and, if applicable, the disciplinary sanctions to be issued against the Respondent and their effective date.
- (8) Multiple Respondents. In cases involving more than one (1) Respondent, the Student Conduct Board Chairperson has the discretion to hold one (1) hearing for all of the Respondents or separate hearings for each Respondent. Any Respondent may, prior to the hearing, request that his or her hearing be conducted separately from the other Respondents' hearings. Such a request must be made in writing to the Student Conduct Board Chairperson using the form(s) provided by the University. The Student Conduct Board Chairperson will decide whether or not to grant such a request, and the Student Conduct Board Chairperson's decision will be final.
- (9) Failure to Appear. If proper notice of the Student Conduct Board Hearing is provided to the Respondent in accordance with Section .09(4) of this Chapter but the Respondent fails to appear at the hearing, the Respondent waives the right to contest the charge(s), and the Office of Student Conduct may issue a Notice of Decision to the Respondent in accordance with Section .12(3) of this Chapter. Notwithstanding the foregoing provisions of this Section .09(9), the Office of Student Conduct may decline to issue a Notice of Decision and permit the Respondent to contest the charge(s) through a Student Conduct Board Hearing upon a showing of good cause by the Respondent for his or her failure to appear.
- (10) Prohibition of Complainant's Participation. Notwithstanding any provisions of the Code to the contrary, including, without limitation, any provisions in this Section .09, a Complainant or other student not designated as a Respondent will not have the right to attend or participate in a Student Conduct Board Hearing or otherwise receive information concerning the hearing if such attendance, participation, or receipt of information would violate federal or state law.
- (11) Appeal. The decision of the Student Conduct Board may be appealed to the Vice Chancellor for Student Affairs in accordance with Section .11 of this Chapter.

Authority: T.C.A. § 49-9-209(e); T.C.A. § 49-7-1703; T.C.A. § 49-7-1704; and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

**1720-02-05-.10 DISCIPLINARY SANCTIONS.**

- (1) Disciplinary sanctions are primarily intended to: (i) educate Respondents about appropriate behavior; (ii) encourage Respondents to take responsibility for Code violation(s); (iii) encourage and promote the personal and professional development of Respondents; (iv) discourage other students from violating the Code; and/or (v) protect members of the University community.
- (2) The disciplinary sanctions imposed on a Respondent should be appropriate for the particular case based on the gravity of the Code violation, including, without limitation, how the violation affected or reasonably could have affected other members of the University community. Consideration also may be given to other aggravating or mitigating factors, including, without limitation: (i) the Respondent's student conduct record; (ii) whether the Respondent committed the violation while acting in self-defense; (iii) the Respondent's responsiveness to the student conduct process; and (iv) the Respondent's academic classification.
- (3) The following disciplinary sanctions may be imposed on a student (excluding student organizations) found to have violated the Code:
  - (a) Disciplinary Reprimand. A disciplinary reprimand is a written warning that informs a Respondent that the Respondent is violating or has violated the Code and must cease and desist from engaging in the misconduct and/or prevent the misconduct from occurring again. A disciplinary reprimand will also inform the Respondent that any further violations of the Code may result in the imposition of more severe sanctions.
  - (b) Loss or Restriction of Privileges. The University may impose a loss and/or restriction of privileges on a Respondent. Privileges that may be lost and/or restricted include, without limitation, the following: (i) scholarships; (ii) stipends; (iii) participation in co-curricular and/or extracurricular activities; and (iv) use and/or access to certain University-controlled property. A loss and/or restriction of privileges may be imposed for a definite or indefinite period of time.
  - (c) Community Service. A Respondent may be required to perform unpaid service for a designated University department, program, or service and/or a University-affiliated or unaffiliated not-for-profit or volunteer organization.
  - (d) Educational Sanction. A Respondent may be required to complete an educational assignment or program. Educational assignments and programs are designed to educate the Respondent about why certain conduct is inappropriate. Examples of educational assignments include, without limitation: (i) writing a reflection and/or research paper on a designated topic; (ii) completing a research project on a designated topic; (iii) giving a presentation on a designated topic; and (iv) issuing a formal apology in writing and/or in person. An educational program may include, without limitation, attending and satisfactorily completing an in-person or distance learning course, training, or workshop on alcohol or drug use, civility, ethics, or other topics deemed appropriate by the Office of Student Conduct. The Respondent will be responsible for all costs associated with the educational assignment or program.
  - (e) Fee or Fine. The University may impose a monetary fee or fine for any cost incurred by the University as a result of the Respondent's conduct and may require that the Respondent pay the fee or fine by a designated due date.
  - (f) Restitution. The University may require a Respondent to make restitution to another person or organization or the University for destruction, damage, or loss of property caused by the Respondent, or for unreimbursed medical expenses resulting from physical injury of another person caused by the Respondent. Restitution may take the form of a monetary payment or appropriate service to repair or otherwise compensate for the destruction, damage, or loss caused by the Respondent.

- (g) Reassignment or Removal from University Housing. The University may reassign a Respondent to a different University housing facility or remove and prohibit a Respondent from residing in any University housing facility for a definite or indefinite period of time.
- (h) Disciplinary Probation. A Respondent may be placed on disciplinary probation for serious or moderate Code violations or in the case of multiple or repeated minor Code violations. A Respondent may be placed on disciplinary probation for a definite or indefinite period of time, during which time the Respondent may continue to be enrolled at the University. While the Respondent is on disciplinary probation, conditions may be placed on the Respondent's continued enrollment at the University, and University departments, programs, and/or services may limit or prohibit participation in certain activities. If a Respondent commits any further Code violations while on disciplinary probation, the Respondent may be subject to more severe sanctions up to and including permanent dismissal.
- (i) Suspension. Suspension is an official separation from the University for a specific period of time and/or until certain conditions are met. A Respondent may be suspended from the University for serious Code violations, in the case of multiple or repeated moderate or minor Code violations, and/or for any Code violations while on disciplinary probation. While on suspension, a Respondent (i) loses all rights and privileges at the University; (ii) may not represent the University in any manner; and (iii) is ineligible to apply for readmission to the University during the suspension period and/or until certain conditions are met. If a Respondent is suspended, the Respondent is prohibited, without the prior approval of the Vice Chancellor for Student Affairs (or his or her designee), from entering upon all University-controlled property, including University residence halls, from the date that the suspension period begins until such date that the Respondent is readmitted to the University (even if the suspension period ends prior to the date of the Respondent's readmission). Entering upon University-controlled property without prior approval from the Vice Chancellor for Student Affairs (or his or her designee) may result in criminal trespass charges against the Respondent under the criminal laws of the State of Tennessee. Respondents permitted to return to the University following a period of suspension will be automatically placed on disciplinary probation for a designated period of time following their return. A Respondent who commits any Code violations while on suspension may be subject to suspension for an additional period of time or barred from readmission and/or re-enrollment at the University.
- (j) Permanent Dismissal. Permanent dismissal is an official and permanent separation from the University. A Respondent may be permanently dismissed from the University when the Respondent's commission of one (1) or more Code violations is deemed so serious as to warrant total and permanent disassociation from the University or when, through repeated violations of the Code and/or violations of the Code while on disciplinary probation or suspension, the Respondent exhibits blatant disregard for (i) the health, safety, and welfare of himself or herself or other members of the University community or (ii) the University's right to establish rules of conduct. A Respondent who is permanently dismissed from the University: (i) loses all rights and privileges at the University; (ii) may not represent the University in any manner; (iii) is indefinitely prohibited, without prior approval of the Vice Chancellor for Student Affairs (or his or her designee) from entering upon all University-controlled property, including University residence halls; and (iv) is permanently barred from re-enrolling at the University. Entering upon University-controlled property without prior approval from the Vice Chancellor for Student Affairs (or his or her designee) may result in criminal trespass charges against the Respondent under the criminal laws of the State of Tennessee.
- (k) Revocation of Admission. The University may revoke a Respondent's admission to the University after the Respondent's admission to the University but prior to Respondent's enrollment at the University, if the Respondent (i) provides false or incomplete information

on Respondent's application for admission; or (ii) violates federal, state, or local law or the Code prior to enrollment. A Respondent whose admission has been revoked: (i) loses all rights and privileges at the University; (ii) may not represent the University in any manner; and (iii) is indefinitely prohibited from entering upon all University-controlled property, including residence halls, without prior approval of the Vice Chancellor for Student Affairs (or his or her designee). Entering upon University-controlled property without prior approval from the Vice Chancellor for Student Affairs may result in criminal trespass charges against the Respondent under the criminal laws of the State of Tennessee.

(l) Withholding of Degree. The University may withhold awarding a degree to a Respondent who has violated any University rule or policy. The University may withhold a degree for a definite period of time and/or until the Respondent has completed or served all sanctions or other requirements imposed by the University for releasing its award of the degree.

(m) Revocation of Degree. The University may revoke a degree awarded to a Respondent if the Respondent obtained the degree, in part, through cheating, plagiarism, academic dishonesty, research misconduct, or other serious violation of the Code. The University may also revoke a Respondent's degree if, after the degree was awarded, the University determines that the Respondent committed a serious violation of the Code while a student, but prior to being awarded the degree, that would have warranted permanent dismissal of the Respondent. Before a Respondent's degree may be revoked, the Chancellor must approve the revocation of the degree.

(4) The following disciplinary sanctions may be imposed on a student organization found to have violated the Code:

(a) Disciplinary Reprimand. A disciplinary reprimand is a written warning that informs a Respondent that the Respondent is violating or has violated the Code and must cease and desist from engaging in the misconduct and/or prevent the misconduct from occurring again. A disciplinary reprimand will also inform the Respondent that any further violations of the Code may result in the imposition of more severe sanctions.

(b) Loss or Restriction of Privileges. The University may impose a loss or restriction of privileges on a Respondent. Privileges that may be lost or restricted include, without limitation, the following: (i) participation in extracurricular activities (e.g., intramurals); (ii) housing privileges; (iii) participation in or sponsorship of social activities; and (iv) use and/or access to certain University-controlled property. A loss or restriction of privileges may be imposed for a definite or indefinite period of time.

(c) Fee or Fine. The University may impose a monetary fee or fine for any cost incurred by the University as a result of the Respondent's conduct and may require that the Respondent pay the fee or fine by a designated due date.

(d) Restitution. The University may require a Respondent to make restitution to another person or organization or the University for destruction, damage, or loss of property caused by the Respondent, or for unreimbursed medical expenses resulting from physical injury of another person caused by the Respondent. Restitution may take the form of a monetary payment or appropriate service to repair or otherwise compensate for the destruction, damage, or loss caused by the Respondent.

(e) Community Service. Members of the Respondent may be required to perform unpaid service for a designated University department, program, or service and/or a University-affiliated or unaffiliated not-for-profit or volunteer organization.

(f) Educational Sanction. Members of the Respondent may be required to complete an educational program. Educational programs are designed to educate the Respondent's

members about why certain conduct is inappropriate. An educational program may include, without limitation, attending and satisfactorily completing an in-person or distance learning course, training, or workshop on alcohol or drug use, civility, ethics, or other topics as deemed appropriate by the Office of Student Conduct. The Respondent will be responsible for all costs associated with the educational program.

- (g) Disciplinary Probation. A Respondent may be placed on disciplinary probation for serious or moderate Code violations or in the case of multiple or repeated minor Code violations. A Respondent may be placed on disciplinary probation for a definite or indefinite period of time, during which time the Respondent may continue to operate at the University. While the Respondent is on disciplinary probation, conditions may be placed on the Respondent's continued operation, and University departments, programs, and/or services may limit or prohibit Respondent's participation in certain activities. If a Respondent commits any further Code violations while on disciplinary probation, the Respondent may be subject to more severe sanctions up to and including suspension or revocation of University registration.
- (h) Suspension. Suspension is an official separation from the University for a definite period of time and/or until certain conditions are met. A Respondent may be suspended from the University for serious Code violations, in the case of multiple or repeated moderate or minor Code violations, and/or for any Code violations while on disciplinary probation. While on suspension, a Respondent (i) may not operate at the University; (ii) may not represent the University in any manner; (iii) and is ineligible to resume operations at the University during the suspension period and/or until certain conditions are met. The Vice Chancellor for Student Affairs will determine whether the Respondent has fulfilled the required conditions for resuming operations at the University. Respondents permitted to resume operating at the University following a period of suspension will be automatically placed on disciplinary probation for a designated period of time following the suspension term. A Respondent who commits any Code violations while on suspension may be subject to suspension for an additional period of time or revocation of its registration with the University.
- (i) Revocation of University Registration. In cases of a serious Code violation by a Respondent or a Respondent's violation of the Code while on disciplinary probation or suspension, the University may revoke the Respondent's registration with the University and cease to recognize the Respondent as a University-sanctioned student organization for a definite or indefinite period of time. If a Respondent's registration is revoked, the Respondent is barred from operating at the University.

(5) More than one (1) of the disciplinary sanctions provided in this Section .10 may be imposed on a Respondent for any single violation of the Code.

(6) Disciplinary sanctions may be applied retroactively to the date of the Code violation(s) committed by the Respondent.

Authority: T.C.A. § 49-9-209(e) and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

#### **1720-02-05-.11 APPEALS.**

(1) Appeal to the Vice Chancellor for Student Affairs.

- (a) Appeal Period. Except as provided in Section .12(3) of this Chapter, the decision of a Hearing Officer or Student Conduct Board may be appealed to the Vice Chancellor for Student Affairs by submitting a Notice of Appeal to the Office of Student Conduct in accordance with Section .11(1)(b) of this Chapter within five (5) business days of the effective date of the Notice of Decision to the appealing party. A Notice of Appeal not

submitted within five (5) business days of the effective date of the Notice of Decision to the appealing party will not be considered.

(b) Notice of Appeal. A Notice of Appeal must state: (i) the name of the party appealing the decision; and (ii) the specific grounds for the appeal. Appeals not based on one (1) or more of the grounds provided under Section .11(1)(c) of this Chapter will not be considered.

(c) Grounds for Appeal. Appeals are limited to the following grounds:

1. The party's rights were violated in the hearing process;
2. New relevant and material information has become available that could not have been discovered at the time of the hearing;
3. The information presented did not support the decision by a preponderance of the evidence standard; or
4. The sanction(s) imposed were not appropriate for the violation.

(d) Response to Appeal by Non-Appealing Party. Upon receipt of a timely-submitted Notice of Appeal, the Office of Student Conduct will provide a copy of the Notice of Appeal to the non-appealing party, if applicable. The non-appealing party may respond to the appeal by submitting a written response to the Office of Student Conduct within three (3) business days of the effective date of the Notice of Appeal to the non-appealing party.

(e) Decision on Appeal.

1. Within ten (10) business days of the Office of Student Conduct's receipt of the Notice of Appeal or the non-appealing party's response to the appeal, whichever occurs later, the Vice Chancellor of Student Affairs (or his or her designee) will provide notice to the parties of his or her decision.
2. The Vice Chancellor for Student Affairs (or his or her designee) may (i) uphold, amend, or overturn the decision of the Hearing Officer or Student Conduct Board; or (ii) return the case to the Hearing Officer or Student Conduct Board for reconsideration.
3. If the Vice Chancellor for Student Affairs decides to uphold, amend, or overturn the decision of the Hearing Officer or Student Conduct Board, the decision of the Vice Chancellor for Student Affairs is final.
4. A decision by the Vice Chancellor for Student Affairs to return the case to the Hearing Officer or Student Conduct Board for reconsideration may not be appealed. Any decision by the Hearing Officer or Student Conduct Board on reconsideration may be appealed in accordance with this Section .11.

(2) Any disciplinary sanction(s) issued by the Hearing Officer or the Student Conduct Board will remain in force throughout the pendency of an appeal, unless the Respondent requests that the disciplinary sanction(s) be stayed pending the Respondent's appeal and such a request is granted by the Hearing Officer or Student Conduct Board, as applicable.

Authority: T.C.A. § 49-9-209(e) and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

**1720-02-05-.12 CONCLUSION OF THE STUDENT CONDUCT PROCESS.**

A case involving alleged violations of the Code by a Respondent may be concluded in one (1) of the following ways:

- (1) No-Action Determination. If the Office of Student Conduct determines at any point in the student conduct process that no action will be taken against the Respondent regarding alleged violations of the Code, it will issue a Notice of Decision to the Respondent setting forth the decision.
  - (a) The Office of Student Conduct, in its discretion, may determine that no action be taken against a Respondent based on, without limitation, the following reasons:
    1. A determination that, based on a preponderance of the evidence, Respondent did not engage in the alleged Code violation(s);
    2. A determination that it does not have sufficient information or witnesses to move forward in the student conduct process; and/or
    3. The Complainant declines to participate in the student conduct process.
  - (b) After making a no-action determination, the Office of Student Conduct may reinstate the student conduct process with respect to the alleged Code violations against the Respondent at any time for good cause, including, without limitation, the discovery of new relevant and material information or a decision by the Complainant to participate in the student conduct process.
- (2) Behavioral Agreement. A case involving alleged violations of the Code will be concluded when the Respondent signs a behavioral agreement as provided under Section .07(4) of this Chapter.
- (3) Failure to Contest. If the Respondent: (i) fails to request in writing a Formal Hearing to contest the charge(s) as provided under Section .07(1)(c) of this Chapter; (ii) fails to appear at a Hearing Officer Hearing or Student Conduct Board Hearing for which the proper notice was provided to the Respondent in accordance with the Code; or (iii) signs a written waiver of his or her right to contest the Code violation charge(s) through a Formal Hearing, the Office of Student Conduct may issue a Notice of Decision to the Respondent finding the Respondent responsible for the charge(s) and imposing the disciplinary sanctions proposed in the Notice of Charges. A decision issued pursuant to this Section .12(3) is not subject to appeal. The Office of Student Conduct may decline to issue a Notice of Decision upon a showing of good cause by the Respondent for his or her failure to timely request a Formal Hearing or to appear at a properly noticed Hearing Officer Hearing or Student Conduct Board Hearing.
- (4) Resolution Agreement. A case will be concluded when a Resolution Agreement resolving the Code violation charge(s) is signed by the Respondent and becomes final and binding in accordance with Section .07(2) of this Chapter.
- (5) Alternative Resolution Agreement. A case will be concluded when the allegations or charges of violations of the Code against the Respondent are resolved through an Alternative Resolution Agreement as provided under Section .07(3) of this Chapter.
- (6) Final Decision – Formal Hearing. In a case in which a Formal Hearing is held and the Respondent does not enter into a Resolution Agreement, the case will be concluded when a decision resolving the Code violation charge(s) is issued and is final. A decision is considered final when it is not appealed, is not subject to an appeal, or all appeals have been exhausted.

Authority: T.C.A. § 49-9-209(e) and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

### 1720-02-05-.13 INTERIM ACTIONS.

In certain situations, the University may impose interim actions prior to the conclusion of the student conduct process. The University will determine the appropriate interim actions based on the totality of the circumstances. Interim actions are not disciplinary sanctions and are taken to protect the safety, security, and welfare of the Complainant, Respondent, the University community, and/or University property.

- (1) No-Contact Directive. In cases involving allegations of assault, physical injury, sexual misconduct, relationship violence, stalking, harassment, and/or retaliation, or where there is reason to believe continued contact between a student and a specific person may interfere with that specific person's security, safety, or ability to participate in work or studies, the University may issue a No-Contact Directive to the student that prohibits the student from having verbal, physical, written, and/or electronic contact, either directly or indirectly, with the specific person for a definite or indefinite period of time. The student will receive written notice of the No-Contact Directive. Any student, faculty or staff member or other person with a reasonable justification may request a No-Contact Directive. Any violation of a No-Contact Directive will be considered a violation of the Code and a risk to the health, safety or welfare of the person whom the student is prohibited from contacting under the directive, and may result in disciplinary sanctions or additional interim actions against the student. A No-Contact Directive may be issued to a student organization under the same circumstances and conditions as provided under this Section .13(1).
- (2) Disciplinary Hold. A Disciplinary Hold is an encumbrance on a student's University record that prevents the student from registering for classes, receiving grades, transcripts, and/or academic credit, and being awarded a degree, until the reason for the hold is resolved. The Office of Student Conduct may place a Disciplinary Hold on a student's University record while allegations of Code violation(s) against the student are under investigation, disciplinary proceedings and/or sanctions against the student are pending or incomplete, or in accordance with other University rules or policies.
- (3) Interim Restriction. When the Office of Student Conduct has reasonable cause to believe that the continued presence of a Respondent (student or student organization) on certain University-controlled property or at certain University-affiliated activities (i) poses a risk to the health, safety, or welfare of others or to property; or (ii) poses a risk of disruption of or interference with the normal operations of the University, the Office of Student Conduct may impose an interim restriction and/or condition ("Interim Restriction") on the Respondent prior to the resolution of the allegations of Code violation(s) against the Respondent in the student conduct process. Examples of Interim Restrictions include, without limitation, restrictions on the Respondent's privileges to participate in University-affiliated activities, restrictions on the Respondent's privileges to access certain University-controlled property, and the Respondent's interim removal and/or reassignment from University-controlled housing. Restrictions imposed on a Respondent under a No-Contact Directive are not Interim Restrictions.

  - (a) The Respondent will be provided written notice of the Interim Restriction and the basis for the Interim Restriction. Unless otherwise determined by the Office of Student Conduct, the Interim Restriction will remain in effect until the conclusion of the student conduct process, which should be completed without undue delay.
  - (b) If the Respondent wishes to contest the Interim Restriction, the Respondent must request in writing to meet with the Vice Chancellor for Student Affairs within three (3) business days of the effective date of the notice of the Interim Restriction. Upon receipt of a timely request for a meeting, the Vice Chancellor for Student Affairs (or his or her designee) will schedule a meeting with the Respondent at which the Respondent will be offered the opportunity to discuss the following issues only: (i) the reliability of the information concerning the Respondent's conduct on which the Interim Restriction was issued; and (ii) whether the conduct and surrounding circumstances reasonably indicate that the Respondent's

continued presence on certain University-controlled property or at certain University-affiliated activities poses a risk to the health, safety, or welfare of others or to property, or a risk to the disruption of or interference with the normal operations of the University. At the conclusion of the meeting, the Vice Chancellor for Student Affairs (or his or her designee) may remove, modify, or maintain the Interim Restriction and will notify the Respondent of his or her decision in writing.

- (c) Violations of the terms of an Interim Restriction may result in disciplinary sanctions and/or additional interim actions against the Respondent, and the Respondent may be treated as a trespasser.
- (4) Interim Suspension. When the Vice Chancellor for Student Affairs has reasonable cause to believe that the continued presence of a Respondent (student or student organization) on University-controlled property or at University-affiliated activities (i) poses a significant risk of substantial harm to the health or safety of others or to property; or (ii) poses an ongoing or imminent threat of disruption to or interference with the normal operations of the University, the Vice Chancellor for Student Affairs may impose an Interim Suspension on the Respondent prior to the resolution of the allegations of Code violation(s) against the Respondent in the student conduct process. During an Interim Suspension, the Respondent shall be denied access to University-controlled property, including residence halls, and all other University-affiliated activities or privileges for which the Respondent might otherwise be eligible, as the Vice Chancellor for Student Affairs determines in his or her sole discretion to be appropriate.
- (a) The Respondent will be provided written notice of the Interim Suspension and the basis for the Interim Suspension. Unless otherwise determined by the Vice Chancellor for Student Affairs, the Interim Suspension will remain in effect until the conclusion of the student conduct process, which should be completed without undue delay.
- (b) If the Respondent wishes to contest the Interim Suspension, the Respondent must request in writing to meet with the Vice Chancellor for Student Affairs within three (3) business days of the effective date of the written notice of the Interim Suspension. Upon receipt of a timely request for a meeting, the Vice Chancellor for Student Affairs (or his or her designee) will schedule a meeting with the Respondent at which the Respondent will be offered the opportunity to discuss the following issues only: (i) the reliability of the information concerning the Respondent's conduct on which the Interim Suspension was issued; and (ii) whether the conduct and surrounding circumstances reasonably indicate that the Respondent's continued presence on certain University-controlled property or at certain University-affiliated activities poses a significant risk of substantial harm to the health, safety, or welfare of others or to property, or an ongoing or imminent threat of disruption to or interference with the normal operations of the University. At the conclusion of the meeting, the Vice Chancellor for Student Affairs (or his or her designee) may remove, modify, or maintain the Interim Suspension and will notify the Respondent of his or her decision in writing.
- (c) Violations of the terms of an Interim Suspension may result in disciplinary sanctions and/or additional interim actions against the Respondent, and the Respondent may be treated as a trespasser. During an Interim Suspension, permission to be on University-controlled property or participate in University-affiliated activities may be granted by the Vice Chancellor for Student Affairs.

Authority: T.C.A. § 49-9-209(e) and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

#### **1720-02-05-.14 STUDENT PARKING APPEALS BOARD.**

- (1) All students who park vehicles or own vehicles parked on University-controlled property are subject to the University's Parking Rules under Chapter 1720-02-03.
- (2) The Student Parking Appeals Board will review all appeals of parking citations issued to students in accordance with Chapter 1720-02-03. Decisions concerning appeals will be made by a majority vote of the Student Parking Appeals Board.
- (3) The Student Parking Appeals Board membership will consist of the student members of the Student Conduct Board.
- (4) A chairperson and a quorum of three (3) members of the Student Parking Appeals Board is required for each hearing on an appeal. A University official from either the Office of Parking Services or the Office of Student Conduct will serve as the chairperson for an appeal hearing. The chairperson will vote on an appeal only in the event of a tie-vote among the board members.
- (5) The chairperson and the board members will be fair and impartial. Any student appealing a parking citation has the right to challenge the fairness or impartiality of the chairperson or any board member hearing the student's appeal. Any chairperson or board member lacking fairness or impartiality will recuse himself or herself or may, for good cause and at the discretion of the Vice Chancellor for Student Affairs (or his or her designee), be removed from hearing an appeal.

Authority: T.C.A. § 49-9-209(e) and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

#### **1720-02-05-.15 STUDENT CONDUCT RECORDS.**

- (1) Maintenance. The University maintains student conduct records separately from student academic records. The Office of Student Conduct serves as the record custodian for student conduct records.
- (2) Disclosure. A student may inspect and review his or her own student conduct records upon request to the Office of Student Conduct. The Office of Student Conduct may disclose a student's student conduct records to other persons upon written consent of the student. The Office of Student Conduct may disclose a student's student conduct records to other persons, including other University officials, without written consent from the student only in accordance with federal or state law.
- (3) Retention and Disposal of Student Conduct Records. The University will retain a student's student conduct records for a period of seven (7) years after the student's last date of enrollment with the University, unless required to retain the records for a longer period of time by law or as otherwise provided in this Section .15(3). The Office of Student Conduct will permanently retain student conduct records for students who receive one (1) or more of the following disciplinary sanctions (or equivalent sanctions under previous versions of the Code) from the University: Suspension, Permanent Dismissal, Withholding of Degree, and Revocation of Degree.
- (4) Retention and Disposal of Student Organization Conduct Records. The University will retain a student organization's conduct records for a period of seven (7) years following the conclusion of the matter to which the conduct records relate, unless required to retain the records for a longer period of time by law or as otherwise provided in this Section .15(4). The Office of Student Conduct will permanently retain student organization conduct records relating to matters in which a student organization receives one (1) or more of the following disciplinary sanctions (or equivalent sanctions under previous versions of the Code) from the University: Suspension or Revocation of Registration.

Authority: T.C.A. § 49-9-209(e) and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

**1720-02-05-.16 AMNESTY FOR GOOD SAMARITANS AND IMPAIRED STUDENTS.**

- (1) The University holds paramount the health, safety, and welfare of students. Accordingly, all 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 drugs.
- (2) Expectations. When a student knows or reasonably should know that another student is in need of emergency medical attention, the student is expected to: (i) contact appropriate persons (including, but not limited to, University faculty or staff members, law enforcement officials, etc.) to report the incident and request assistance, including providing his or her name and contact information and the name and contact information of the impaired student; and (ii) demonstrate cooperation and care by remaining with the impaired student and providing reasonable assistance during and after the incident. A student who complies with the expectations described in this Section .16 is referred to as a "Good Samaritan." A student in need of emergency medical attention is referred to as an "impaired student" under this Section .16.
- (3) Amnesty for Good Samaritans. Unless a Good Samaritan has engaged in repeated or serious violations of the Code (including, but not limited to, physical or sexual assault, property destruction, disorderly behavior, theft, multiple alcohol or drug violations), a Good Samaritan will not be subject to formal University disciplinary action for any Code violation(s) discovered by the University as a result of the Good Samaritan's report. While no formal University disciplinary action may be taken, a Good Samaritan may be required to meet with the Office of Student Conduct to discuss the Good Samaritan's Code violation(s) and adhere to appropriate remedial and/or educational recommendations.
- (4) Amnesty for Impaired Student. Unless an impaired student has engaged in repeated or serious violations of the Code (including, but not limited to, physical or sexual assault, property destruction, disorderly behavior, theft, multiple alcohol or drug violations), an impaired student will not be subject to formal University disciplinary action for any Code violation(s) discovered by the University as a result of the Good Samaritan's report. While no formal University disciplinary action may be taken, the impaired student may be required to meet with the Office of Student Conduct to discuss the impaired student's Code violation(s), participate in educational activities, and/or establish that he or she has addressed the issues that contributed to the Code violation(s).
- (5) Application to Student Organizations. Student organizations, through their officers and members, are also expected to take responsible action in emergency situations in accordance with the expectations under Section .16(2) of this Chapter. A student organization may receive amnesty for any Code violation(s) discovered by the University as a result of the Good Samaritan reports of its officers and/or members, but if not granted amnesty, the responsible actions of its officers and/or members will be considered a mitigating factor when determining disciplinary sanctions, if any, for any Code violation(s) for which the student organization is found responsible. Conversely, the failure of a student organization's officers and/or members to take responsible action in emergency situations in accordance with the expectations under Section .16(2) of this Chapter may be considered an aggravating factor when determining disciplinary sanctions, if any, for any Code violation(s) for which the student organization is found responsible.

Authority: T.C.A. § 49-9-209(e) and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

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

**CHAPTER 1720-02-05  
STUDENT CODE**

**1720-02-05-.01 INTRODUCTION.**

- (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 and in compliance with University rules and policies. The University has established the following rules in order to advance the mission of the University by maintaining a safe and secure learning environment, 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 institutional integrity 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.
- (2) The University of Tennessee is committed to respecting students' constitutional rights. Nothing in this chapter is intended or shall be interpreted to restrict students' constitutional rights, including, but not limited to, rights of freedom of speech and assembly.
- (3) Disputes between organizations (except in fraternity/sorority cases which may be within the jurisdiction of the appropriate Greek governing council and/or the Dean of Students office) shall be subject to the jurisdiction of the Vice Chancellor for Student Development or his or her designee.
- (4) The Vice Chancellor for Student Development or his or her designee shall have jurisdiction over disputes between individual students and organizations when such arbitration is requested by either of the parties involved.

**1720-02-05-.02 DEFINITIONS.**

1. The term "University" means the University of Tennessee at Chattanooga.
2. The term "student" means a person admitted, enrolled or registered for study at the University of Tennessee at Chattanooga, either full-time or part-time, pursuing undergraduate, graduate, or professional studies, as well as non-degree students. Persons not officially registered or enrolled for a particular term but who are eligible to enroll or have a continuing relationship with the University also are considered students for purposes of these rules.
3. The term "student organization" means an organization composed of University students that has submitted a pending application or completed the process for registration according to University rules.

4. The term "University-controlled property" means all land, buildings, facilities, grounds, structures, or any other property owned, leased, used, maintained, or operated by the University. For purposes of this rule, University-controlled property includes all streets, alleys, sidewalks, and public ways abutting such property. University-controlled property also includes computers and network systems owned, maintained, or controlled by the University or funded by the University.
5. The term "University-affiliated activity" means any activity on or off University-controlled property that is initiated, aided, authorized, sponsored, or supervised by the University.
6. The term "University official" means an employee of the University, including faculty members and staff, or a University-recognized volunteer. Student employees may be considered University officials when acting in the performance of their duties (e.g., event staff, resident assistants, and teaching assistants).
7. The term "member of the University community" means any person who is a student, University official, campus visitor, or participant in a University-sponsored or University-affiliated activity.
8. The term "possession" means 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.
9. The term "weapon" means 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, but not limited to, 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.
10. The term "notice" means notice given in writing and 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 e-mail address is an official method of communication used by the University about student conduct matters.
11. The term "coercion" means words and/or conduct that, viewed from the perspective of a reasonable person, substantially impair a person's ability to voluntarily choose whether to engage in a particular sexual act (e.g., sexual contact or sexual intercourse). Coercion is something more than mere seduction or persuasion. Coercion includes, without limitation: physical force; and words and/or conduct that would cause a reasonable person to fear imminent harm to the person's health, safety, or property or that of a third person; threat of the loss or impairment of a job benefit; threat of the loss or impairment of an academic benefit; kidnapping of the person or a third person; or disclosure of sensitive personal

information (e.g., disclosure of a person's sexual orientation, gender identity, or gender expression).

12. The term "consent" means an affirmative and voluntary agreement by a person to engage in a specific sexual act. Consent must be obtained, and the responsibility for obtaining consent rests with the individual who voluntarily and physically initiates a specific sexual act, even if the other person initiated the sexual encounter.
  1. One's own use of alcohol, drugs, or other substances does not diminish one's responsibility to obtain Consent from the other person. Moreover, another person's use of alcohol, drugs, or other substances does not diminish one's responsibility to obtain consent from that person.
  2. The term "affirmative," as used in the definition of consent, means that consent is communicated only through words and/or non-verbal actions that convey a clear agreement to engage in a specific sexual act. Whether person has communicated an agreement to engage in a specific sexual act generally is evaluated from the perspective of what a reasonable person who perceived the individual's words and/or non-verbal actions would have understood; however, in the context of a long-term relationship between persons that has involved sexual activity and a pattern of communicating consent, whether consent has been communicated may be evaluated based on a subjective standard (i.e., what did the specific person who initiated the specific sexual act conclude?). A verbal "no" (or words equivalent to "no"), even if it sounds insincere or indecisive, always means that consent has not been communicated, or if previously communicated has been withdrawn. The absence of a verbal "no" does not necessarily mean that consent has been communicated. Because interpreting non-verbal actions may lead to misunderstanding and a violation of this policy, students are strongly encouraged to err on the side of caution and not rely solely on the non-verbal actions of another person in concluding that the other person has communicated consent. The University urges students to talk to one another before engaging in a sexual act to ensure that they both wish to engage in the same sexual act.
  3. Consent cannot be obtained by or inferred from:
    1. silence that is not accompanied by non-verbal actions conveying a clear agreement to engage in a particular sexual act;
    2. consent communicated by the other person on a previous occasion;
    3. consent communicated to another person;
    4. the other person's failure to resist physical force (however, for purposes of this policy, the other person's resistance to physical force will be viewed as a clear demonstration that the person has not communicated consent);
    5. the sexual arousal of the other person;
    6. a current or previous dating, romantic, intimate, or sexual relationship with the other person;
    7. currently or previously cohabitating with the other person;
    8. the other person's attire;

9. — the other person's reputation;
  10. — the other person's giving or acceptance of gifts; or
  11. — the other person's extension or acceptance of an invitation to go to a private residence, room, or location.
12. — Consent is not voluntary if it is obtained by coercion. Nor is consent voluntary if it is obtained from a person who is incapacitated if one knows (or a reasonable person would know) that the other person is incapacitated. Because the incapacitation of another person may be difficult for one to discern, students are strongly encouraged to err on the side of caution (i.e., when in doubt, assume that the other person is incapacitated and therefore unable to give consent.)
13. — Consent must be continual, which means that consent must exist from the beginning to the end of each sexual encounter and for each specific sexual act that occurs during a sexual encounter. A person has a right to change his/her mind; thus, consent to engage in a specific sexual act may be withdrawn by a person at any time. A withdrawal of consent is communicated through clear words and/or clear non-verbal actions that indicate that a person no longer agrees to engage in a specific sexual act. Once a person's withdrawal of consent has been communicated, the other person must cease the specific sexual act and must obtain consent before reinitiating the specific sexual act. Consent is automatically withdrawn when a person becomes incapacitated. Consent to one type of sexual contact or sexual intercourse (e.g., oral intercourse) does not constitute or imply consent for another type of sexual contact or sexual intercourse (e.g., vaginal intercourse), whether during a sexual encounter or during a previous sexual encounter. The University urges students to communicate with one another throughout a sexual encounter to ensure that any progression of sexual activity is done with consent.
14. — The term "course of conduct" means two (2) or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about another person, or interferes with another person's property.
15. — The term "dating violence" means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim of the violence. The existence of such a relationship shall be determined based on the reporting party's statement and with consideration of the following factors: (1) the length of the relationship; (2) the type of relationship; and (3) the frequency of interaction between the persons involved in the relationship. Dating violence includes, without limitation, sexual or physical abuse or the threat of such abuse.
16. — The term "domestic violence" means a felony or misdemeanor crime of violence committed:
1. — by a current or former spouse or intimate partner of the victim;
  2. — by a person with whom the victim shares a child in common;
  3. — by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner;

4. ~~by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred; or~~
5. ~~by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.~~
6. ~~The term "good faith" means having a belief in the truth of information that a reasonable person in the same situation 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.~~
7. ~~The term "incapacitated" or "incapacitation" means a temporary or permanent physical or mental state in which a person cannot make informed, rational judgments (e.g., judgments concerning sexual contact, sexual intercourse, or sexual exploitation) because: the person lacks the physical or mental capacity to understand the nature or consequences of their words and/or conduct; and/or the person is unable to physically or verbally communicate consent. Incapacitation can be voluntary or involuntary. Incapacitation is determined based on the totality of the circumstances. Incapacitation may result from: sleep; unconsciousness; intermittent consciousness; temporary or permanent physical or mental disability; involuntary physical restraint; or the influence of alcohol, drugs, or other substances, including, without limitation, substances used to facilitate sexual assault (e.g., Rohypnol, Ketamine, GHB, and Burundanga). Alcohol and drugs are common causes of incapacitation. When alcohol or drugs are involved, Incapacitation is a state beyond mere drunkenness or intoxication. The impact of alcohol and drugs varies from person to person; however, warning signs of incapacitation may include, without limitation: lack of control over physical movements (e.g., inability to dress/undress without assistance; inability to walk without assistance); lack of awareness of circumstances or surroundings; vomiting; unresponsiveness; and inability to communicate coherently. A person who is under the age of eighteen (18) (i.e., a minor) is incapable of giving consent; however, a person who is at least the age of thirteen (13) and less than the age of eighteen (18) is capable of giving consent to sexual acts with another person who is less than four (4) years older than them.~~
8. ~~The term "reasonable person" means 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.~~
9. ~~The term "relationship violence" means dating violence and/or domestic violence.~~
10. ~~The term "retaliation" means an act (i) taken by a student (including an act taken through a third party) because of another person's participation in a protected activity (ii) that would discourage a reasonable person from engaging in protected activity. Protected activity includes a person's good faith: (i) opposition to conduct prohibited under the Standards of Conduct; (ii) report to the University about conduct prohibited under the Standards of Conduct to the University; (iii) participation (or reasonable expectation of participation) in any manner in an investigation, meeting, hearing, or interim measure; or (iv) exercise of rights or responsibilities under any provision of the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act. 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 an act taken against a person's family, friends, advisors, and/or other persons reasonably expected to provide information in connection with a University investigation or hearing.~~

11. ~~The term "sexual assault" means engaging in sexual contact or sexual intercourse with another person without the consent of that person.~~
12. ~~The term "sexual contact" means the intentional touching of another person (including another person's clothing) in a sexual manner with any part of one's body or with any object. Sexual contact also means intentionally causing another person to touch themselves (including their clothing) in a sexual manner. Whether a touching was done in a sexual manner is determined from the perspective of a sober, objectively reasonable person in the same situation and with the same sex, gender identity, and sexual orientation as the person who was touched.~~
13. ~~The term "sexual exploitation" means an act or attempted act by a person for the purpose of sexual arousal or gratification, financial gain, or other personal benefit through the abuse or exploitation of another person's sexuality. Examples of sexual exploitation include, without limitation: observation of a person who is undressed or engaging in sexual contact or sexual intercourse, without the consent of all persons being observed (in a place where a person has a reasonable expectation of privacy); creation or distribution of images, photography, an audiotape, or a videotape of sexual contact, sexual intercourse, or a person's intimate parts (i.e., genitalia, groin, breasts, buttocks) without the consent of all persons being recorded or photographed; prostituting another person; allowing others to observe, either in person or electronically, sexual contact or sexual intercourse without the consent of all persons involved in the sexual contact or sexual intercourse (in a place where a person has a reasonable expectation of privacy); and knowingly exposing another person to a sexually transmitted infection without informing the other person that one has a sexually transmitted infection.~~
14. ~~The term "sexual harassment" means with respect to the conduct of a student, unwelcome conduct of a sexual nature 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 the term "sexual harassment" be construed to prohibit speech protected by the First Amendment to the United States Constitution (e.g., mere insulting or offensive speech). Sexual harassment may include, for example, unwelcome sexual advances, requests for sexual favors, and acts of sexual assault. The term "sexual harassment" also means, with respect to the conduct of a student employee (when acting as a student employee): unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when: submission to such conduct is made either explicitly or implicitly a term or condition of an individual's participation in an educational program; submission to or rejection of such conduct by an individual is used as the basis for evaluation or advancement in an educational program; or such conduct has the purpose or effect of unreasonably interfering with an individual's educational performance or creates an intimidating, hostile or offensive educational environment. Sexual harassment is a form of sex discrimination. To determine whether conduct constitutes sexual harassment, consideration shall be given to the totality of the circumstances, including without limitation: the context in which the conduct and/or words occurred; and the frequency, nature, and severity of the conduct and/or words.~~
15. ~~The term "sexual intercourse" means the penetration, no matter how slight, of the vagina or anus with any body part or object; or oral penetration by a sex organ of another person.~~
16. ~~The term "sexual misconduct" means sexual harassment, sexual assault, and/or sexual exploitation.~~
17. ~~The term "stalking" means engaging in a course of conduct directed at a specific person that would cause a reasonable person to: (1) fear for the person's safety or the safety of~~

others; or (2) suffer substantial emotional distress. For the purposes of this definition, the term "reasonable person" means a reasonable person under similar circumstances and with similar identities to the victim.

18. The term "substantial emotional distress" means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.
19. The term "UAPA" means the Uniform Administrative Procedures Act, Tennessee Code Annotated § 4-5-101 et seq.
20. The term "UAPA Hearing" means a hearing conducted by an administrative judge or hearing officer in accordance with the University's procedures for conducting a contested case pursuant to the UAPA, Chapter 1720-01-05.

### **1720-02-05-.03 JURISDICTION.**

1. The Standards of Conduct, Chapter 1720-02-05-.04, apply to conduct that occurs on University-controlled property.
2. The University also has the discretion to discipline a student for an act in violation of the Standards of Conduct that occurs off University-controlled property if the conduct adversely affects the interests of the University, including, but not limited to, conduct which:
  1. occurs in connection with a University-affiliated activity, including, but not limited to, an overseas study program or a clinical, field, internship, or in-service experience;
  2. involves another member of the University community; or
  3. threatens, or indicates that the student may pose a threat to, the health or safety of him/herself or others or the security of any person's property, including, but not limited to, alcohol-related offenses, drug-related offenses, arson, battery, fraud, hazing, participation in group violence, rape, sexual assault or misconduct, stalking, and theft.

The above-listed examples of off-campus conduct that is subject to discipline are separate and independent grounds for discipline, and one ground for discipline shall not be interpreted in any manner to modify, explain, or limit any other ground for discipline.

3. The Standards of Conduct have been adopted in furtherance of the University's interests and serve to supplement, rather than substitute for, the enforcement of the civil and criminal law. Accordingly, University disciplinary action may be instituted against a student charged with conduct that potentially violates both the criminal law and the Standards of Conduct without regard to the pendency of criminal charges or civil litigation. At the discretion of the Vice Chancellor for Student Development, or his/her designee, disciplinary action relating to a violation of the Standards of Conduct may be carried out prior to, simultaneously with, or following criminal proceedings. Students accused of violating the Standards of Conduct may not challenge the University disciplinary proceedings 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 not yet adjudicated. The University may refer matters to federal, state, or local authorities for prosecution when appropriate.

4. ~~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 conduct is not discovered by the University until after a degree is awarded). Should a student withdraw from the University with disciplinary charges pending, the student's academic record and/or ability to register for classes may be encumbered by the appropriate University office.~~
5. ~~Graduate or professional programs within the University may initiate charges against students for alleged violations of professional standards or ethics as a separate issue or as an extension of alleged acts of academic dishonesty or other violations of the Standards of Conduct.~~

~~**1720-02-05-.04 STANDARDS OF CONDUCT.** A student or student organization may be disciplined for the following types of misconduct:~~

1. ~~Cheating, plagiarism, or any other act of academic dishonesty, including, but not limited to, an act in violation of The Honor Code.~~
2. ~~Providing false information to a University official.~~
3. ~~Falsifying, distorting, misrepresenting, or withholding information in connection with a University investigation or hearing.~~
4. ~~Forging, altering, destroying, falsifying, or misusing records, identification, or documents.~~
5. ~~Causing physical harm to any person (including oneself); endangering the health or safety of any person (including oneself); 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, which is defined as 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. ~~Engaging in sexual misconduct, relationship violence, or stalking.~~
8. ~~Invasion of another person's privacy when that person has a reasonable expectation of privacy, including, but not limited to, 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 unauthorized recordings by any means is also prohibited.~~
9. ~~Theft, misappropriation, unauthorized possession, or unauthorized sale of private or public property, including but not limited to University-controlled property.~~
10. ~~Vandalizing, destroying, damaging, engaging in conduct that reasonably could cause damage to, or misusing private or public property, including but not limited to University-controlled property.~~

11. Participating in hazing. "Hazing" is defined as any intentional or reckless act, on or off University-controlled property, by one student, acting alone or with others, which is directed against any other student, that endangers the mental or physical health or safety of that student, or which induces or coerces a student to endanger his or her mental or physical health or safety, and includes treatment of a violent, abusive, shameful, insulting, or humiliating nature. Without limiting the foregoing, such action is prohibited when connected with initiation into or affiliation with an organization and does not include participation in customary athletic events or similar competition.
12. Engaging in disorderly conduct, which means: 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.
13. Engaging in lewd, indecent, or obscene conduct. "Lewd, indecent, or obscene" conduct includes, but is not limited to, public exposure of one's sexual organs, public urinating, and public sexual acts.
14. 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.
15. 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.
16. Possessing, using, or duplicating University keys, access cards, or identification cards without authorization; possessing, using, or entering University-controlled property without authorization.
17. Theft, misuse, or unauthorized use of information technology facilities, resources, or access codes, including, but not limited to: 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.
18. Possessing, using, storing, or manufacturing any weapon or any facsimile of a 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.
19. 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.
20. Consuming, manufacturing, possessing, distributing, dispensing, selling, or being under the influence of alcoholic beverages, if prohibited by federal, state, or local law.
21. Providing an alcoholic beverage to a person younger than twenty-one (21) years of age.

22. ~~Using, manufacturing, possessing, distributing, selling, dispensing, or being under the influence of drugs or 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.~~
23. ~~Failing to pay a University bill, account, or other University financial obligation.~~
24. ~~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; 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.~~
25. ~~Failing to appear at a University hearing, including, but not limited to, a hearing of a University judicial board, following a request to appear either as a party or as a witness.~~
26. ~~Violating the terms of an interim suspension, a no-contact directive, or a disciplinary penalty imposed by the University.~~
27. ~~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. In no event shall this rule be construed to discipline a student for speech protected by the First Amendment to the United States Constitution.~~
28. ~~Violating a University policy or rule as stipulated herein or as promulgated and announced by authorized personnel, including but not limited to University policies or rules relating to facilities use, smoking, the acceptable use of information technology resources, research or service 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.~~
29. ~~Committing an act that is prohibited by local, state, or federal law.~~
30. ~~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.~~
31. ~~Engaging in retaliation.~~

#### **1720-02-05-05 INVESTIGATIONS OF STUDENT CONDUCT.**

- (1) ~~All University investigations shall be conducted in an ethical manner, keeping in mind the rights of students. The following regulations shall be strictly observed.~~
- (2) ~~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, the University will investigate and resolve reports of sexual misconduct, relationship violence, and stalking in accordance with the University's Policy on Sexual Misconduct, Relationship Violence, and Stalking.~~
- (3) ~~Inspection and Search Policy. Entry by University officials into occupied rooms in residence halls will be divided into three categories: inspection, search, and emergency. Inspection is defined as the entry into an occupied room by University officials in order to ascertain the health and safety conditions in the room, or to make repairs on facilities, or to perform~~

cleaning and janitorial operations. Search is defined as the entry into an occupied room by on-campus authorities for the purpose of investigating suspected violations of campus regulations and/or city, state, or federal law. An emergency situation exists when the delay necessary to obtain search authorization constitutes a danger to persons, property, or the building itself.

- (a) ~~Inspection: Scheduled inspections by University officials, with the exception of daily janitorial and maintenance operations, shall be preceded, if possible, by twenty-four hours notice to the residents. During the inspection, there will be no search of drawers or closets or personal belongings.~~
- (b) ~~Search: University officials will not enter a room for purposes of search except in compliance with state law or with the permission of the resident or the written permission of the Vice Chancellor for Student Development or his or her designee. University officials shall have, if possible, the Resident Director or his or her designee accompany them on the search.~~

#### ~~1720-02-05-.06 DUE PROCESS AND STUDENT RIGHTS.~~

- (1) ~~Due process shall guarantee to the accused student the following:~~
  - (a) ~~The right to be informed of charges in writing prior to the hearing.~~
  - (b) ~~The right of reasonable time in which to prepare a defense.~~
  - (c) ~~The right to a fair and just hearing.~~
  - (d) ~~The right to challenge all charges and testimony used against the accused student and to question witnesses.~~
  - (e) ~~The right to be informed in writing of:~~
    - 1. ~~The final decision of his or her case.~~
    - 2. ~~The proper procedure for appeal.~~
  - (f) ~~The right to be accompanied by an advisor he or she chooses, at his or her own expense.~~
    - 1. ~~The accused student is responsible for presenting his or her own information, and therefore, advisors are not to speak or participate directly in a University hearing.~~
    - 2. ~~Students should select as an advisor a person whose schedule allows attendance at the scheduled date and time for the University hearing.~~
    - 3. ~~Delays will not normally be allowed due to the scheduling conflicts of an advisor.~~
- (2) ~~Any student or student organization shall be formally charged in writing with the alleged offense. The date, time, and place of occurrence of the offense shall be stated on the statement of charges.~~
- (3) ~~The Dean of Students office must keep accurate records of each hearing and the disposition of each case.~~

- (4) ~~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, in a case involving an allegation of sexual misconduct, relationship violence, or stalking, the accused student and the alleged victim shall have the rights outlined in the University's Policy on Sexual Misconduct, Relationship Violence, and Stalking. Additionally, 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.~~

#### **~~1720-02-05-07 STUDENT CONDUCT HEARING PROCEDURES.~~**

##### ~~1. Conflicts of Interest~~

- ~~1. The student conduct process must be carried out in a manner that is free from conflicts of interest consistent with due process of law.~~
- ~~1. In cases involving allegations of sexual assault, dating violence, domestic violence, or stalking, the student conduct process 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. 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 alleged victim/complainant with equivalent rights as the accused student/respondent during the student conduct process.~~

##### ~~1. Complaints~~

- ~~1. Any member of the University community may present a complaint to the Dean of Students office against a student for violations of the Student Code. Any complaint should be submitted as soon as possible after the event takes place. Any charge(s) shall be prepared in writing by the Dean of Students office.~~
- ~~2. All charges shall be presented to the accused student in written form.~~

##### ~~2. Hearing Options~~

- ~~1. An accused student desiring to contest the charge(s) against him or her must do so by requesting a hearing within five (5) days of his or her receipt of written notice of the charge(s).~~
- ~~2. The accused student(s) may, at his or her option, request a hearing before a panel of individuals (Student Conduct Board) or by a University Hearing Officer selected by the Vice Chancellor for Student Development (or his or her designee). A hearing before a Student Conduct Board will be chaired by a University Hearing Officer similarly selected. Board members and hearing officers shall be impartial and anyone lacking such impartiality shall recuse him/herself or may be removed by the Vice Chancellor for Student Development upon request of any party to a University hearing. Neither an employee in the Office of Student Conduct nor a person who investigated the allegations of misconduct against the accused student shall serve as a University Hearing Officer, be a member of the Student Conduct Board, or advise the University Hearing Officer or the Student Conduct Board.~~
- ~~3. A requested hearing shall be scheduled promptly after receipt of the request.~~

4. ~~In the absence of a voluntary written waiver of the accused student's right to a hearing under the provisions of the Uniform Administrative Procedures Act (UAPA) (T.C.A. § 4-5-101 et seq.), when the UAPA requires the University to offer the accused student a hearing under the UAPA, a requested hearing will be conducted in accordance with the University's rules for conducting contested case proceedings under the UAPA, Chapter 1720-01-05, and the procedures in this Section .07 shall not apply.~~
  
3. ~~Notice of Hearing Concerning Allegations of Sexual Assault, Dating Violence, Domestic Violence, or Stalking. At least seventy-two (72) hours prior to a hearing concerning allegations of sexual assault, dating violence, domestic violence, or stalking, the University shall provide the accused student/respondent with notice of the following: (1) the time, place, and date of the hearing; (2) the name of each witness the University expects to present at the hearing and those the University may present if the need arises; (3) 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 (4) 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.~~
  
4. ~~Hearing Procedures — The Student Conduct Board or University Hearing Officer sitting alone will conduct the hearing within the following general guidelines:~~
  1. ~~All University hearings shall be closed to the public.~~
  2. ~~The accused student (and certain "victims" where permitted by law) and his or her advisor, if any, shall be allowed to attend the entire portion of the University Hearing at which information is received (excluding deliberations).~~
  3. ~~Each party will be afforded a full and fair opportunity to present all evidence, including witnesses, reasonably relating to the charge or action at issue; evidence which is irrelevant, immaterial, repetitious or voluminous may be limited.~~
  4. ~~All procedural questions are determined by the University Hearing Officer.~~
  5. ~~The Student Conduct Board or University Hearing Officer sitting alone will consider all evidence presented, giving due consideration to the credibility or weight of each item presented; technical rules of evidence will not apply.~~
  6. ~~The standard for a finding of responsible is a preponderance of the evidence.~~
  7. ~~Following the conclusion of the University hearing, the Student Conduct Board or University Hearing Officer sitting alone will consider the evidence and present written findings.~~
  8. ~~An appropriate record will be made of the hearing procedures. Deliberations shall not be recorded. Defects in the record will not invalidate the proceedings.~~
  
5. ~~In cases involving an allegation of sexual assault or misconduct, the hearing procedures shall be modified to afford the alleged victim all of the rights described in Chapter 1720-2-5-.06(4).~~

**1720-02-05-.08 PENALTIES.**

1. ~~Disciplinary penalties are primarily intended to educate students and student organizations about appropriate behavior, encourage students and student organizations to take responsibility for misconduct, promote the personal and professional development of students, discourage other students and student organizations from violating the Standards of Conduct, and protect members of the University community. The penalties imposed should be 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 student's or student organization's conduct record, the student's or student organization's responsiveness to the conduct process, student academic classification, and other aggravating or mitigating factors.~~
2. ~~The following penalties may be imposed on any student found to have violated the Standards of Conduct:~~
  1. ~~Warning. A notice that the student is violating or has violated the Standards of Conduct.~~
  2. ~~Loss of Privilege. This penalty is intended to serve as a reminder of the Standards of Conduct and is for a specific period of time. Privileges that may be lost include, but are not limited to, scholarships, stipends, participation in extracurricular activities (e.g. intramurals), housing privileges, participation in social activities, and use of certain University-controlled property (e.g., information technology resources).~~
  3. ~~Educational Sanction. Students may be required to attend classes, at their own expense, dealing with issues such as the consequences of alcohol or drug use, civility, ethics, or other topics as deemed appropriate by the Vice Chancellor for Student Development or his/her designee.~~
  4. ~~Restitution. Restitution may be required in situations that involve destruction, damage, or loss of property, or unreimbursed medical expenses resulting from physical injury. Restitution may take the form of a monetary payment or appropriate service to repair or otherwise compensate for the destruction, damage, or loss.~~
  5. ~~Disciplinary Reprimand. A disciplinary reprimand is used for minor violations of the Standards of Conduct. A reprimand indicates that further violations will result in more severe disciplinary actions.~~
  6. ~~Disciplinary Probation. This penalty permits a student to remain at the University on probationary status but with the understanding that a future violation of the Standards of Conduct may result in suspension. Other conditions of probation are specific to each individual case and may include a requirement of community service or other requirement or restriction.~~
  7. ~~Suspension for a Specific Period of Time. Suspension for a specific period of time means that the student is withdrawn from the University and is not eligible to apply for readmission for a designated period of time. Usually, the period of designated suspension does not exceed one (1) calendar year. Other conditions of suspension are specific to each individual case and may include a requirement of community service or other requirement or restriction.~~
  8. ~~Permanent Dismissal. Permanent dismissal means that a student is permanently barred from matriculating as a student on the Chattanooga campus. This penalty is used when the violation of one or more of the institution's Standards of Conduct~~

is deemed so serious as to warrant total and permanent disassociation from the University community without the possibility of re-enrollment; or when, by his/her repeated violation of the institution's Standards of Conduct, a student exhibits blatant disregard for the health and safety of other members of the University community or the University's right to establish rules of conduct.

9. ~~Revocation of Admission or Degree. Revocation of admission or degree means revoking a student's admission to the University or revoking a degree already awarded by the University. Revocation of a degree shall be approved by the University of Tennessee Board of Trustees.~~
3. ~~A disciplinary hold may be placed on a student's account until the completion of the student disciplinary process or until the student satisfies the terms and conditions of any penalties imposed.~~
4. ~~The following penalties may be imposed on a student organization found to have violated the Standards of Conduct:~~
  1. ~~Warning. A notice that the student organization is violating or has violated the Standards of Conduct.~~
  2. ~~Educational Sanction. Student organizations may be required to attend classes, at their own expense, dealing with issues such as the consequences of alcohol or drug use, civility, ethics, or other topics as deemed appropriate by the Dean of Students or his/her designee.~~
  3. ~~Loss of Privilege. This penalty is intended to serve as a reminder of the Standards of Conduct and is for a specific period of time. Examples of privileges that may be lost include participating in extracurricular activities (e.g., intramurals), housing privileges, participating in social activities, and using certain University-controlled property.~~
  4. ~~Restitution. Restitution may be required in situations that involve destruction, damage, or loss of property, or unreimbursed medical expenses resulting from physical injury. Restitution may take the form of a monetary payment or appropriate service to repair or otherwise compensate for the destruction, damage, or loss.~~
  5. ~~Disciplinary Probation. Disciplinary probation means that a student organization is permitted to retain University registration on a probationary status. Violation of the Standards of Conduct during the period of disciplinary probation may result in more serious penalties, including revocation of University registration.~~
  6. ~~Revocation of University Recognition. In cases of serious misconduct, a student organization's University registration may be revoked.~~
5. ~~More than one of the penalties listed above may be imposed for any single violation of the Standards of Conduct. Penalties may be applied retroactively to the date of the offense.~~
6. ~~Intoxication or impairment because of alcohol, drugs, chemicals, or other substances does not diminish or excuse a violation of the Standards of Conduct.~~

~~**1720-02-05-09 NO CONTACT DIRECTIVE.** In cases involving allegations of assault, injury, sexual abuse, harassment, or where there is reason to believe continued contact between a student and specific persons, including complainants and witnesses, may interfere with those persons' security, safety or ability to participate effectively in work or studies, the Vice Chancellor for Student Development, or his/her~~

designee, may require that the student not have verbal, physical, or written contact with specific persons for a definite or indefinite period of time. The student will receive written or electronic notice of the no contact directive. Any student, faculty or staff member or other person with a reasonable justification may request a no contact directive. In addition to an internal University no contact directive, complainants are advised that other similar options exist and can be obtained from law enforcement and civil and criminal courts.

#### **1720-02-05-.10 INTERIM SUSPENSION.**

1. ~~When the Vice Chancellor for Student Development or his/her designee has reasonable cause to believe that a student's continued presence on University-controlled property or at University-affiliated activities poses a significant risk of substantial harm to the health or safety of others or to property or poses an ongoing threat to the disruption of, or interference with, the normal operations of the University, the Vice Chancellor for Student Development or his/her designee may impose an interim suspension prior to the conclusion of a full hearing on the alleged misconduct.~~
2. ~~An interim suspension shall be confirmed by a written statement that explains the basis for the interim suspension and shall remain in effect until the conclusion of a full hearing in accordance with the rules of the University of Tennessee, which shall be held without undue delay.~~
3. ~~Within three (3) business days of the imposition of the suspension, the student shall be offered an opportunity to appear personally before the Vice Chancellor for Student Development or his/her designee in order to discuss the following issues only: (i) the reliability of the information concerning the student's conduct; and (ii) whether the conduct and surrounding circumstances reasonably indicate that the student's continued presence on University-controlled property or at University-affiliated activities poses a significant risk of substantial harm to the health or safety of others or to property or poses an imminent threat of disruption of or interference with the normal operations of the University.~~
4. ~~During an interim suspension, the student shall be denied access to University-controlled property, including residence halls, and all other University-affiliated activities or privileges for which the student might otherwise be eligible, as the Vice Chancellor for Student Development or his/her designee determines in his/her sole discretion to be appropriate. A student who receives an interim suspension and violates the terms of the interim suspension shall be subject to further disciplinary action and may be treated as a trespasser. Permission to be on University-controlled property or participate in University-affiliated activities may be granted by the Vice Chancellor for Student Development or his/her designee.~~

#### **1720-02-05-.11 APPEALS.**

1. ~~Decisions of the Student Conduct Board or University Hearing Officer sitting alone may be appealed to the Vice Chancellor for Student Development by delivering a signed statement containing:~~
  1. ~~A statement that he/she appeals the decision;~~
  2. ~~A brief statement of the grounds for the appeal. The basis for filing an appeal is limited to the following grounds:~~
    1. ~~the student's or student organization's rights were violated in the hearing process;~~
    2. ~~new relevant material evidence or information has been provided that could not have been discovered at the time of the hearing;~~

3. ~~the information presented did not support the decision by a preponderance of the evidence (more likely than not) standard; or~~
  4. ~~the sanction(s) imposed were not appropriate for the violation.~~
2. ~~The Vice Chancellor for Student Development may:~~
1. ~~Uphold the decision;~~
  2. ~~Amend the decision;~~
  3. ~~Return the case for reconsideration; or~~
  4. ~~Overturn the decision.~~
3. ~~Either Party may appeal to the Chancellor of the University. In cases of involving a finding that a student is guilty of sexual assault or misconduct, the alleged victim shall have the right to appeal the decision of the Student Conduct Board or University Hearing Officer to the Vice Chancellor for Student Development.~~

**1720-02-05-12 WITHDRAWAL OR TEMPORARY SUSPENSION DUE TO PHYSICAL OR PSYCHOLOGICAL ILLNESS.**

1. ~~When a student is unable to pursue his or her academic work effectively, or when his or her behavior is disruptive to the normal educational processes of the University, or constitutes a threat to members of the University community, due to, among other things, the use of alcohol, drugs, or other psychologically incapacitating illnesses or conditions, he or she may be withdrawn or temporarily suspended from the University as hereinafter provided.~~
  1. ~~Withdrawal. A student may be withdrawn from the University only after an evaluation of his or her mental, physical condition, or behavior by a panel of at least three persons appointed by the Vice Chancellor for Student Development. The student shall be notified of the reasons for the evaluation and given an opportunity to present evidence to the committee. He or she shall enjoy the rights of normal due process procedures. The committee's findings and recommendations shall be forwarded to the Vice Chancellor for Student Development who will notify the student in writing of his or her decision. A student withdrawn under this procedure shall not be readmitted to the University without the approval of the Vice Chancellor for Student Development.~~
  2. ~~Grades. When a student is suspended or withdrawn from the University for reasons described in this section, he or she will be assigned a grade of "W".~~
  3. ~~Committee Composition and Hearing. The panel referred to herein will include at least one member of the faculty at large and representative of the Counseling Center or a psychologist. The Dean of Students or his or her designee would normally have responsibility for preparing the charges and presenting the case. The student in question would have the right to normal due process provisions.~~
2. ~~Temporary Suspension. Whenever a student, because of his or her mental or physical condition, is unable to pursue his or her academic work effectively, or is disruptive to educational processes or constitutes a danger to persons or property, he or she may be suspended from the University for a reasonable period of time by the Vice Chancellor for Student Development. The University will then schedule a hearing within 5 class days of~~

the beginning of the suspension. If the University does not withdraw the student after the hearing, he or she may return to the University at the end of the suspension period.

~~1720-02-05-13 PARKING APPEALS.~~ Appeals of student parking tickets are reviewed by the Student Parking Appeals Board. Decisions concerning the appeals are based on a majority vote of the Board.

~~1720-02-05-14 COMPOSITION OF STUDENT PARKING APPEALS BOARD.~~

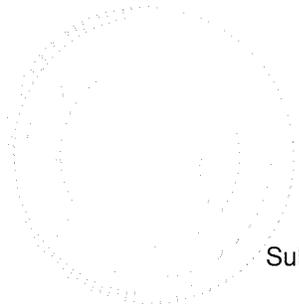
- ~~(1) — The Student Parking Appeals Board shall be composed of six student members plus a Chair and six alternates. Two students will be appointed by the Student Senate from the general student body. Two students will be appointed by the faculty, one appointed by the President of SGA, and one appointed by the Office of Student Development. Each appointing body shall also appoint the alternates. An alternate will serve when a regular member cannot be present or when a member is excused for reasons such as personal friendship with the principals.~~
- ~~(2) — All members must have a 2.00 cumulative grade point average and be enrolled as full-time students and not be on any form of probation.~~
- ~~(3) — The Chair will be elected by the Board and votes in case of tie.~~
- ~~(4) — A temporary chair will be elected by the members of the board in the event:
  - ~~(a) — The Chair is a party to the case;~~
  - ~~(b) — The Chair is absent; or~~
  - ~~(c) — The Chair removes himself/herself from the case.~~~~
- ~~(5) — Once appointed, students remain on the Student Parking Appeals Board until they terminate at the University, cease to be eligible to serve, or resign voluntarily.~~

~~1720-02-05-15 EMERGENCY SITUATIONS.~~ When in the opinion of the Chancellor, conditions are such that there exists a clear and immediate danger to the physical safety or well-being of the members of the University community or safety of University property, he or she may direct that the accused student or organization be suspended pending initiation (and completion) of normal disciplinary proceedings provided those procedures are offered as soon as can reasonably be accomplished. The Chancellor may delegate this authority to the Vice-Chancellor for Student Development.

\* 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)
John Compton	x				
Commissioner Charles Hatcher				x	
Decosta Jenkins	x				
Kara Lawson	x				
Amy E. Miles	x				
Kenneth Packer (non-voting trustee)					
William C. Rhodes III	x				
Donnie Smith	x				
Kim H. White	x				
Alan D. Wilson	x				
Jamie Woodson	x				

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the University of Tennessee Board of Trustees on 03/01/2019, 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: 7/25/19

Signature: *[Handwritten Signature]*

Name of Officer: Matthew Scoggins

Title of Officer: General Counsel

Subscribed and sworn to before me on: July 25, 2019

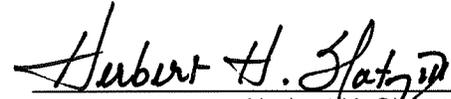
Notary Public Signature: Jina M. Loflin

My commission expires on: 8-1-2022

Agency/Board/Commission: University of Tennessee (Chattanooga)

Rule Chapter Number(s): 1720-02-05 Student Code of Conduct

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  
9/24/2019  
Date

**Department of State Use Only**

Filed with the Department of State on: 9/30/19

Effective on: 12/29/19

  
Tre Hargett  
Secretary of State

SEP 30 PM 12:26  
SECRETARY OF STATE  
FILINGS

## G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: University of Tennessee

SUBJECT: Unclaimed Property

STATUTORY AUTHORITY: Public Chapter 929 of 2018

EFFECTIVE DATES: December 29, 2019 through June 30, 2020

FISCAL IMPACT: Minimal

STAFF RULE ABSTRACT: The University of Tennessee is subject to the State of Tennessee's "Uniform Unclaimed Property Act," compiled at Tennessee Code Annotated Section 66-29-101 et seq., and related regulations. To comply with that act, the University has, for many years, maintained a fiscal policy referred to as "FI0140 Unclaimed Property." To ensure compliance with Public Chapter 929 of 2018, the University is converting the Unclaimed Property policy to a rule in accordance with the rulemaking procedures of the Uniform Administrative Procedures Act (UAPA).

## **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 rule is not anticipated to have an impact 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 Regula(<http://publications.tnsosfiles.com/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

The rule is not anticipated to have an impact on local government.

**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 is subject to the State of Tennessee's "Uniform Unclaimed Property Act," Tenn. Code Ann. §§ 66-29-101 et seq., and related regulations. To comply with that Act, the University has for many years maintained a fiscal policy referred to as "FI0140 Unclaimed Property." To ensure compliance with Public Chapter 929 (2018), the University is converting the Unclaimed Property policy to a rule in accordance with the rulemaking procedures of the Uniform Administrative Procedures Act (UAPA).

- (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 929 (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;

The University of Tennessee Board of Trustees urges adoption. The apparent owners of unclaimed property are most directly affected by this rule. The University of Tennessee Board of Trustees did not receive any requests from the public to address the Board about 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 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;

Matthew Scoggins, General Counsel

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

Matthew Scoggins, 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

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: 09-29-19  
Rule ID(s): 9246  
File Date: 9/30/19  
Effective Date: 12/29/19

# 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

**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
1720-01-14	Unclaimed Property
Rule Number	Rule Title
1720-01-14-.01	General
1720-01-14-.02	Unclaimed Property
1720-01-14-.03	Due Diligence
1720-01-14-.04	Stored Value Cards
1720-01-14-.05	Accounts Receivable Credit Balances
1720-01-14-.06	Unclaimed Property Report
1720-01-14-.07	Timetable for Unclaimed Property
1720-01-14-.08	Disposition of Non-Cash Items (Lost and Found)
1720-01-14-.09	Payment of Claims
1720-01-14-.10	Confiscated Property
1720-01-14-.11	Procedures
1720-01-14-.12	Contacts

Rules of  
The University of Tennessee  
(All Campuses)

Chapter 1720-01-14  
Unclaimed Property

Table of Contents

<u>1720-01-14-.01</u>	<u>General</u>	<u>1720-01-14-.08</u>	<u>Disposition of Non-Cash Items</u>
<u>1720-01-14-.02</u>	<u>Unclaimed Property</u>		<u>(Lost and Found)</u>
<u>1720-01-14-.03</u>	<u>Due Diligence</u>	<u>1720-01-14-.09</u>	<u>Payment of Claims</u>
<u>1720-01-14-.04</u>	<u>Stored Value Cards</u>	<u>1720-01-14-.10</u>	<u>Confiscated Property</u>
<u>1720-01-14-.05</u>	<u>Accounts Receivable Credit</u>	<u>1720-01-14-.11</u>	<u>Procedures</u>
	<u>Balances</u>	<u>1720-01-14-.12</u>	<u>Contacts</u>
<u>1720-01-14-.06</u>	<u>Unclaimed Property Report</u>	<u>1720-01-14-.13</u>	<u>Related Policies</u>
<u>1720-01-14-.07</u>	<u>Timetable for Unclaimed</u>		
	<u>Property</u>		

1720-01-14-.01 General

The University of Tennessee ("the University") is subject to the State of Tennessee's "Uniform Unclaimed Property Act," T.C.A. § 66-29-101 et seq. (the "Act") and Regulations 1700-02-01-.01 through 1700-02-01-.37, when it is a holder of property that is unclaimed and presumed to be abandoned by the apparent owner of the property, if the last known address of the apparent owner, as shown on the University's records, is in Tennessee or is unknown. This Act requires the University to exercise due diligence in attempting to locate apparent owners of unclaimed property in its custody and to annually report certain unclaimed property to the State. Additionally, the State of Tennessee accepts unclaimed property for which the apparent owner's last known address is in another state or commonwealth of the U.S. The State reciprocally reports this property on behalf of the University to the appropriate state or commonwealth.

Authority: T.C.A. § 49-9-209(e) and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

1720-01-14-.02 Unclaimed Property

- (1) The Act applies to unclaimed property:
  - (a) that the University owes to or is holding for other organizations or individuals; and
  - (b) for which the University has had no contact with the apparent owner for a minimum of one (1) year up to the maximum statutory period.
- (2) Unclaimed property includes, but is not limited to:
  - (a) Uncashed payroll checks
  - (b) Uncashed disbursement checks
  - (c) Uncashed refund checks
  - (d) Uncashed miscellaneous checks
  - (e) Unidentified remittances

(f) Credit balances in accounts receivable

(g) Stored Value Cards (VolCard, Mocs, Skyhawk Card, etc.)

(3) Non-cash items are considered "lost and found" items. These items are not considered to be unclaimed property and should not be reported to the State.

Authority: T.C.A. § 49-9-209(e) and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

#### 1720.01-14-.03 Due Diligence

(1) Before reporting unclaimed property as described above, the University is required to exercise due diligence in attempting to notify the apparent owner of amounts of \$50 or greater with information on how to claim property. "Due diligence" is defined under applicable Tennessee law as the degree of care which a reasonably prudent person would exercise in the normal course of business operations and sending a written notice via first-class or registered mail to the last known address of the apparent owner. Such written notice must be sent not more than one hundred eighty (180) days, nor less than sixty (60) days, before filing the report with the State Treasurer. If an apparent owner of unclaimed property has consented to receive electronic mail communications from the University, the University shall send the notice by both first-class mail to the apparent owner's last known mailing address and by electronic mail, unless the University has reason to believe that the apparent owner's electronic mail address is not valid. (Property under \$50 requires no due diligence notice letter and is submitted to the State along with other unclaimed amounts from the same calendar year.)

(2) The University's notice to the apparent owner of unclaimed property must contain a heading that reads substantially as follows "Notice: The State of Tennessee requires us to notify you that your property may be transferred to the custody of the State Treasurer if you do not contact us within thirty (30) days after the date of this notice."

(3) Mail returned as "undeliverable" is evidence that the apparent owner cannot be located. If the apparent owner cannot be located, the property should be considered abandoned and be reported to the State as unclaimed property.

(4) Unreturned mail is considered a contact (presumably, the apparent owner has received the notification and is now aware of the property's location). If contact is established, the property is no longer considered to be abandoned and should not be reported to the State. If the apparent owner does not claim the property or provide the University with directions for disposing of the property within ninety (90) days of the date of contact, the University may then assume ownership of the property. The Controller's Office will account for these funds in claimed property funds that remain available should the funds be claimed by owners.

Authority: T.C.A. § 49-9-209(e) and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

#### 1720-01-14-.04 Stored Value Cards

Each campus or institute business office is responsible for performing due diligence on all stored value cards (VolCard, Mocs Card, Skyhawk Card, etc.) that have been inactive for at least one (1) year and a maximum of five (5) years and that have a balance of \$50 or greater. Detailed information associated with these cards must be maintained at the campus or institute level. Each campus or institute must compile and transmit a file of names, addresses, and social security numbers of dormant account owners, along

with amounts to the Controller's Office by October 1 of each year. The list will also include balances under \$50 for which due diligence is not required. This effort must be coordinated with the Controller's Office.

Authority: T.C.A. § 49-9-209(e) and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

#### 1720-01-14-.05 Accounts Receivable Credit Balances

Each campus or institute business office is responsible for performing due diligence on all credit balances in accounts receivable that have been inactive for at least one (1) year and a maximum of five (5) years and that have a balance of \$50 or greater. Detailed information associated with these balances must be maintained at the campus or institute level. Each campus or institute must compile and transmit a file of names, addresses, and social security numbers of dormant account owners, along with amounts to the Controller's Office by October 1 of each year. The list will also include credit balances under \$50 for which due diligence is not required. This effort must be coordinated with the Controller's Office. As an alternative, credit balances under \$50 and inactive for one (1) year may be reported through the Accounts Receivable Write-Off Request (Form T-35).

Authority: T.C.A. § 49-9-209(e) and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

#### 1720-01-14-.06 Unclaimed Property Report

- (1) The Act requires the annual filing of the Unclaimed Property Report for all unclaimed property. The report must be submitted electronically through the "Report It TN," the Tennessee Unclaimed Property online reporting portal, in the required NAUPA format. No paper reports are accepted. More information can be found on the State Treasurer's Office website.
- (2) The University Controller's Office should compile the list of all cash items (i.e., uncashed checks, unidentified remittances, credit balances in accounts receivable, stored value cards) for the entire University and report it to the State Treasurer's Office. Reports must be filed with the State Treasurer on or before November 1 of each year and must include property presumed abandoned held as of June 30 of the appropriate reporting year. The State Treasurer may grant one thirty (30) day extension provided a written request is received on or before November 1.
- (3) The University must retain supporting records relating to the reports for ten (10) years after the later of the date each report was filed or the last date a timely report was due to be filed, unless a shorter period is prescribed by the State Treasurer.

Authority: T.C.A. § 49-9-209(e) and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

#### 1720 -01-14-.07 Timetable for Unclaimed Property

The following timetable describes the year's schedule for reporting unclaimed property.

June 30  
End of reporting year.

July 1 – August 31  
Controller's Office and campus or institute business offices (stored value cards and credit balances in accounts receivable) perform required due diligence on appropriate items considered abandoned.

October 1

Deadline for campus or institute business offices to transmit excel file of abandoned property to the Controller's Office (stored value card and credit balances in accounts receivable).

November 1

Reports, verification forms and unclaimed property (cash) are due in the State Treasurer's Office.

Note: The University will require proper proof of ownership when individuals claim property items. The Controller's Office and campus or institute business offices have developed procedures for handling claims.

Authority: T.C.A. § 49-9-209(e) and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

1720-01-14-.08 Disposition of Non-Cash Items (Lost and Found)

(1) Abandoned non-cash items may be:

(a) Sold at a public auction or by sealed bids in accordance with F10610 – Surplus Property;

(b) Donated to a local charity (if not purchased through a public sale); or

(c) Discarded or destroyed if not valuable.

(2) The following provisions apply to certain types of valuable property:

(a) Jewelry must be appraised and a minimum sales price established. If appraised at little or no value, the jewelry should be discarded.

(b) Coins that appear to have a market value substantially higher than face value should be appraised and a minimum sales price set.

(c) Firearms should be disposed of in accordance with local statutes.

(d) Dangerous items (items of a combustible nature that are dangerous to store) should be safely disposed of as soon as possible.

(e) Illegal items should be disposed of in accordance with instructions from the proper legal authorities.

Authority: T.C.A. § 49-9-209(e) and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

1720-01-14-.09 Payment of Claims

Since 1990, the University has annually remitted unclaimed property funds to the State Treasurer. Before receiving payment for claims, apparent owners must present property proof of ownership to the State Treasurer or the University. Accordingly, payment of claims for reported unclaimed property subsequent to 1990 is the responsibility of the State Treasurer.

Authority: T.C.A. § 49-9-209(e) and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

1720-01-14-.10 Confiscated Property

Confiscated property will not be considered abandoned and should be treated as University surplus property for disposal purposes. Confiscated firearms and other hazardous items should be disposed of in accordance with local statutes.

Authority: T.C.A. § 49-9-209(e) and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

\* 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)
John Compton	x				
Commissioner Charles Hatcher				x	
Decosta Jenkins	x				
Kara Lawson	x				
Amy E. Miles	x				
Kenneth Packer (non-voting trustee)					
William C. Rhodes III	x				
Donnie Smith	x				
Kim H. White	x				
Alan D. Wilson	x				
Jamie Woodson	x				

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the University of Tennessee Board of Trustees on 03/01/2019, 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.

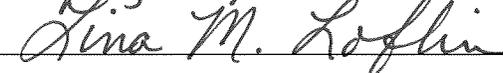
Date: 7/25/19

Signature: 

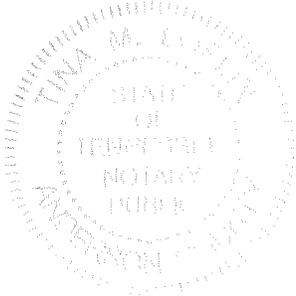
Name of Officer: Matthew Scaggins

Title of Officer: General Counsel

Subscribed and sworn to before me on: July 25, 2019

Notary Public Signature: 

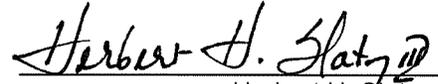
My commission expires on: 8-1-2022



Agency/Board/Commission: University of Tennessee

Rule Chapter Number(s): 1720-01-14 Unclaimed Property

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  
8/14/2019  
Date

**Department of State Use Only**

Filed with the Department of State on: \_\_\_\_\_

9/30/19

Effective on: \_\_\_\_\_

12/29/19



Tre Hargett  
Secretary of State

2019 SEP 30 PM 12:16  
SECRETARY OF STATE  
PUSH NOTIONS

## G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: University of Tennessee

SUBJECT: Surplus Property

STATUTORY AUTHORITY: Public Chapter 929 of 2018

EFFECTIVE DATES: December 29, 2019 through June 30, 2020

FISCAL IMPACT: None

STAFF RULE ABSTRACT: The University of Tennessee occasionally has property that a department determines to be obsolete, unusable, or for which future needs do not justify the cost of maintenance and/or storage. To provide guidelines for handling such surplus property, the university has, for many years, maintained a fiscal policy referred to as "FI0610 Surplus Property." To ensure compliance with Public Chapter 929 of 2018, the university is converting the surplus property policy to a rule in accordance with the rulemaking procedures of the Uniform Administrative Procedures Act (UAPA).

**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 rule is not anticipated to have an impact 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 Regula(<http://publications.tnsosfiles.com/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

The rule is not anticipated to have an impact on local government.

**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 occasionally has property that a department determines to be obsolete, unusable, or for which future needs do not justify the cost of maintenance and/or storage. To provide guidelines for handling such surplus property, the University has for many years maintained a fiscal policy referred to as "FI0610 Surplus Property." To ensure compliance with Public Chapter 929 (2018), the University is converting the Surplus Property policy to a rule in accordance with the rulemaking procedures of the Uniform Administrative Procedures Act (UAPA).

- (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 929 (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;

The University of Tennessee Board of Trustees urges adoption. The rule affects prospective purchasers of surplus property. The University of Tennessee Board of Trustees did not receive any requests from the public to address the Board about 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 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;

Matthew Scoggins, General Counsel

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

Matthew Scoggins, 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

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: 09-30-19  
Rule ID(s): 9247  
File Date: 9/30/19  
Effective Date: 12/29/19

## 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
1720-01-15	Surplus Property
Rule Number	Rule Title
1720-01-15-.01	Definition
1720-01-15-.02	General Policy
1720-01-15-.03	Responsibilities of the Department
1720-01-15-.04	Responsibilities of Surplus Property Personnel
1720-01-15-.05	Responsibilities of the Controller's Office
1720-01-15-.06	Sanctions Relating to the Sale of Surplus Property
1720-01-15-.07	Exceptions

Rules of  
The University of Tennessee  
(All Campuses)

Chapter 1720-01-15  
Surplus Property

Table of Contents

<u>1720-01-15-.01</u>	<u>Definition</u>	<u>1720-01-15-.05</u>	<u>Responsibilities of the</u>
<u>1720-01-15-.02</u>	<u>General Policy</u>		<u>Controller's Office</u>
<u>1720-01-15-.03</u>	<u>Responsibilities of the</u>	<u>1720-01-15-.06</u>	<u>Sanctions Relating to the Sale</u>
	<u>Department</u>		<u>of Surplus Property</u>
<u>1720-01-15-.04</u>	<u>Responsibilities of Surplus</u>	<u>1720-01-15-.07</u>	<u>Exceptions</u>
	<u>Property Personnel</u>		

1720-01-15.01 Definition

Surplus property means any property such as movable equipment or supplies (opposed to real property such as land or building) a department of The University of Tennessee (all campuses) determines to be obsolete, or unusable or property for which future needs do not justify the cost of maintenance and/or storage.

Authority: T.C.A. § 49-9-209(e) and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

1720-01-15-.02 General Policy

The Chancellors or designee for each University campus or institute shall designate a department or individual responsible for the disposal of all surplus property and the communications of applicable policies and procedures for their location. For purposes of this rule, the designated department or individual is referred to as the Surplus Property Personnel or Department. University departments not physically located on a campus will use the Surplus Property Personnel located closest to them or they will work remotely with the personnel from their campus/institute to dispose of surplus property in the most efficient manner that complies with this regulation.

Authority: T.C.A. § 49-9-209(e) and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

1720-01-15-.03 Responsibilities of the Department

- (1) When feasible a department should attempt to determine if their surplus property can be used by another university department. If the two (2) departments agree on a transfer, the issuing department should prepare Form T-64, Equipment Inventory Change/Delete Request, to transfer ownership and accountability to the receiving department. If financial consideration is involved, the two (2) departments shall determine the amount and transfer the funds through a transfer voucher.
- (2) If the property can be traded-in to reduce the cost of replacement equipment, the department must work with their purchasing department on this transaction. If purchasing determines that trading-in the property is more advantageous than selling it, the purchasing department will issue a purchase order for the purchase of the new equipment. The department is then responsible for completing Form T-64 to remove the traded-in equipment from their official inventory records.

- (3) If the property cannot be transferred to another university department or traded-in, the department must contact their Surplus Property Personnel and follow their policies and procedures for the disposal of the property. Departments are not authorized to dispose of property, sell it, or permanently transfer it to an external organization (even if it is another governmental agency or non-profit).
- (4) The form must require the signature of the department head or designee declaring the property surplus. Electronic or digital signatures are acceptable.
- (5) The department is responsible for retaining a copy of all surplus property documents for six (6) years, including signed forms transferring the surplus property from their possession. The department is also responsible for verifying that the surplus property has been removed from their inventory records. This should be done annually.
- (6) Surplus property, which the federal government or other entity owns, should be transferred to that entity when no longer needed. If applicable, Form T-64 should be completed by the department to remove this property from the University's inventory records.

Authority: T.C.A. § 49-9-209(e) and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

#### 1720-01-15-.04 Responsibilities of Surplus Property Personnel

- (1) Each Surplus Property Department is responsible for completing a form(s) for departments to declare property as surplus. The forms must be approved by the Controller's Office, and at a minimum contain the following:
  - (a) Name and location of the department declaring the property as surplus.
  - (b) Location of the property such as building and room number.
  - (c) Departmental contact information including e-mail and telephone.
  - (d) Itemized description of each piece of equipment that has a UT tag number. Non-tagged items do not have to be itemized, if impractical (i.e., 100 classroom chairs).
  - (e) The form must require the signature of the department head or designee that is declaring the property surplus and the campus surplus department personnel who are picking up the property. Electronic or digital signatures are acceptable.
  - (f) The form(s) must require the identification of all computers or other devices that may potentially store confidential information.
  - (g) The form(s) must require the identification of any chemicals or equipment that may be considered radioactive, hazardous, toxic, or require special handling to comply with applicable environmental regulations.
  - (h) The form must allow for routing to the Controller's office for removal or transfer of surplus property.
- (2) The Surplus Property Personnel are responsible for developing procedures to ensure that all computers, hard drives or other equipment that may store university data have been sanitized and the data is unreadable before the equipment is disposed of or sold.
- (3) The Surplus Property Personnel are responsible for contacting their safety officer(s) or other appropriate personnel whenever property is being declared surplus from a lab or

whenever any equipment may contain hazardous material that may pose a safety concern. Surplus property personnel are responsible for developing procedures with their safety officer(s) to ensure that all potentially hazardous chemicals and equipment are disposed of in a manner that complies with applicable federal, state and university regulations.

- (4) Surplus property personnel are responsible for ensuring that an adequate audit and inventory trail exists for all items of surplus property. This would include from the time that property is transferred to their possession until the sale or disposal of the item.
- (5) Surplus property personnel are responsible for determining which of the following disposal methods is the most advantageous. One (1) of these methods must be used:
  - (a) Publicly advertised auction.
  - (b) Transfer to another university department.
  - (c) Publicly advertised sale under sealed bids.
  - (d) Internet auction.
  - (e) Negotiated contract for sale at arm's length (conducted among unrelated parties), but only for property that becomes surplus regularly, such as livestock, forestry products, and marketable waste products, but not motor vehicles.
  - (f) Transfer to other state agencies, student association or public school systems.
  - (g) Sale to state and other governmental entities.
  - (h) Transfer to non-profit entities approved by the Tennessee Department of General Services.
  - (i) The property may be destroyed by an appropriate method, if it is determined that it has no salvage or economic value.
- (6) The System Risk Management Office must approve of the disposal method for any property involved in an insurance claim.
- (7) The Surplus Property Department is responsible for forwarding all applicable documents to the Controller's office for all university tagged equipment that is disposed of by them or transferred by them to another university department. This must occur as soon as the property is no longer in their possession.
- (8) When a Surplus Property Department (or designee) decides to dispose of surplus property by public auctions or sealed bids, these proposed sales must be publicly advertised and publicly held. The Surplus Property Department (or designee) conducting the sale must advertise it in at least two (2) public places in the county or counties in which the sale is to be made. The notice must describe the property, date, time, place, manner, and conditions of the sale. The sale must not be held sooner than seven (7), nor later than fifteen (15), days after the last day of the public notice (excluding weekends and holidays).
- (9) No person, firm, or corporation may be sent invitations to bid on proposed sales unless no other market has been found for the property without requesting such bids. Prospective buyers for various types of surplus property may be sent copies of the published notice, or they may be notified that a public notice has been posted on a stated date.

Authority: T.C.A. § 49-9-209(e) and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and

Public Acts of Tennessee, 1807, Chapter 64.

1720-01-15-.05 Responsibilities of the Controller's Office

The equipment records section of the Controller's Office is responsible for removing and transferring all surplus property items reported to them. They are also responsible for distributing annual equipment inventory verification reports to each department for their review and approval.

Authority: T.C.A. § 49-9-209(e) and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

1720-01-15-.06 Sanctions Relating to the Sale of Surplus Property

(1) The Surplus Property Department (or designee) conducting the sale must ensure that all prospective purchasers are aware of the following sanctions:

(a) It is a felony punishable by a fine of \$5,000 to \$10,000 and/or imprisonment from one (1) to ten (10) years for any person to make any arrangement, contract, agreement, trust, or combination of these among persons or corporations which is designed to or tends to control the price the university receives for such property or the cost to the purchaser of such property. In addition to this penalty, a state or university employee who violates this provision may be removed from employment and prohibited from such employment for five (5) years.

(b) It is also a misdemeanor punishable by a fine of \$500 or two-and-one-half times the value of the property bought, whichever is greater, for any state/university official or employee to purchase any surplus property from the university (except by bid at public auction) during his or her tenure of office or employment and for six (6) months thereafter. For all sales except public auctions, the Surplus Property Department (or designee) conducting the sale must obtain from each purchaser a signed disclaimer certifying that the purchaser is not a state or university employee and that the purchaser is not buying the property for or on behalf of any state or university employee.

Authority: T.C.A. § 49-9-209(e) and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

1720-01-15-.07 Exceptions

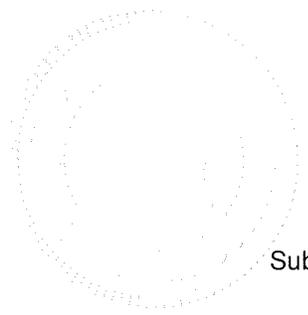
Surplus property may be disposed of by a method other than those listed in this regulation upon approval of the campus/institute's chief business officer (or designee) and the University's chief financial officer.

Authority: T.C.A. § 49-9-209(e) and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

\* 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)
John Compton	x				
Commissioner Charles Hatcher				x	
Decosta Jenkins	x				
Kara Lawson	x				
Amy E. Miles	x				
Kenneth Packer (non-voting trustee)					
William C. Rhodes III	x				
Donnie Smith	x				
Kim H. White	x				
Alan D. Wilson	x				
Jamie Woodson	x				

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the University of Tennessee Board of Trustees on 03/01/2019, 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: 7/25/19

Signature: *[Handwritten Signature]*

Name of Officer: Matthew Scoggins

Title of Officer: General Counsel

Subscribed and sworn to before me on: July 25, 2019

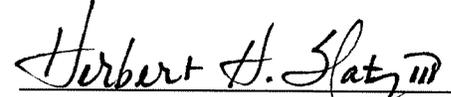
Notary Public Signature: Jina M. Loflin

My commission expires on: 8-1-2022

Agency/Board/Commission: University of Tennessee

Rule Chapter Number(s): 1720-01-15 Surplus Property

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  
8/14/2019  
Date

**Department of State Use Only**

Filed with the Department of State on: 9/30/19

Effective on: 12/29/19

  
Tre Hargett  
Secretary of State

RECEIVED  
SEP 30 PM 12:18  
SECRETARY OF STATE  
PUBLICATIONS

## G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: University of Tennessee

SUBJECT: Standing Rule Governing Requests to Address the Board of Trustees

STATUTORY AUTHORITY: Tennessee Code Annotated Section 49-9-209(d)(1)(R)

EFFECTIVE DATES: December 29, 2019 through June 30, 2020

FISCAL IMPACT: None

STAFF RULE ABSTRACT: Tennessee Code Annotated Section 49-9-209(d)(1)(R) requires the University of Tennessee Board of Trustees to "[p]rovide, in conjunction with regular meetings of the Board, a reasonable opportunity for the public to address the board or a committee of the Board concerning issues germane to the responsibilities of the Board." In compliance with this requirement, the university is promulgating this proposed rule to implement that requirement.

## **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 rule is not anticipated to have an impact 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 Regula(<http://publications.tnsosfiles.com/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

The rule is not anticipated to have an impact on local government.

### 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;

Tennessee Code Annotated § 49-9-209(d)(1)(R) requires the UT Board of Trustees to "[p]rovide, in conjunction with regular meetings of the Board, a reasonable opportunity for the public to address the board or a committee of the board concerning issues germane to the responsibilities of the Board." In compliance with this requirement, the University is promulgating a new rule to implement that requirement.

- (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;

Tennessee Code Annotated § 49-9-209(d)(1)(R) requires the UT Board of Trustees to "[p]rovide, in conjunction with regular meetings of the Board, a reasonable opportunity for the public to address the board or a committee of the board concerning issues germane to the responsibilities 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;

The University of Tennessee Board of Trustees urges adoption. Individuals who wish to address the Board are directly affected by this rule. The University of Tennessee Board of Trustees did not receive any requests from the public to address the Board about 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 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;

Matthew Scoggins, General Counsel

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

Matthew Scoggins, 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

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: 09-31-19  
 Rule ID(s): 9248  
 File Date: 9/30/19  
 Effective Date: 12/29/19

## 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
1720-01-16	Standing Rule Governing Requests to Address the Board of Trustees
Rule Number	Rule Title
1720-01-16-.01	Introduction
1720-01-16-.02	Preregistration
1720-01-16-.03	Permissible Subjects
1720-01-16-.04	Time Allocation
1720-01-16-.05	Scheduling of Speakers
1720-01-16-.06	Notice to Scheduled Speakers
1720-01-16-.07	Other Terms and Conditions
1720-01-16-.08	Modifications
1720-01-16-.09	Board Action

Rules of  
The University of Tennessee  
(All Campuses)

Chapter 1720-01-16  
Standing Rule Governing Requests to Address the Board of Trustees

Table of Contents

<u>1720-01-16-.01</u>	<u>Introduction</u>	<u>1720-01-16-.06</u>	<u>Notice to Scheduled Speakers</u>
<u>1720-01-16-.02</u>	<u>Preregistration</u>	<u>1720-01-16-.07</u>	<u>Other Terms and Conditions</u>
<u>1720-01-16-.03</u>	<u>Permissible Subjects</u>	<u>1720-01-16-.08</u>	<u>Modifications</u>
<u>1720-01-16-.04</u>	<u>Time Allocation</u>	<u>1720-01-16-.09</u>	<u>Board Action</u>
<u>1720-01-16-.05</u>	<u>Scheduling of Speakers</u>		

1720-01-16-.01 Introduction

- (1) In conjunction with each regular meeting of the University of Tennessee Board of Trustees ("Board"), an opportunity will be provided for students, employees, and members of the general public to address the Board, or a committee of the Board, concerning items on the meeting agenda and other issues germane to the responsibilities of the Board.
- (2) The following procedures, terms, and conditions shall govern requests to address the Board.

Authority: T.C.A. § 49-9-209(d)-(e) and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

1720-01-16-.02 Preregistration

- (1) All persons wishing to speak must preregister by completing a Request to Address the Board form [<https://trustees.tennessee.edu/requests-to-address-the-board/>] and submitting it to the Board of Trustees Office [<https://trustees.tennessee.edu/submitting-information-to-the-board/>] no later than three (3) calendar days before the first day of a regular Board meeting. Regular Board meeting dates are posted on the Board website, <http://trustees.tennessee.edu/>.
- (2) Persons will be preregistered on a "first come, first served" basis. A waiting list will not be kept from meeting to meeting.

Authority: T.C.A. § 49-9-209(d)-(e) and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

1720-01-16-.03 Permissible Subjects

- (1) Persons may request to speak about items on the meeting agenda or other issues germane to the responsibilities of the Board. The agenda for committee and Board meetings are published on the Board website, <http://trustees.tennessee.edu/>, approximately one (1) week prior to each regular meeting.
- (2) The Board will not hear speakers on grievances or appeals specific to individual students or employees or on pending or threatened litigation involving the University or University officials. If a speaker departs from the subject for which he or she preregistered to speak, the presiding officer will declare the speaker out of order and instruct the speaker to yield the podium.

Authority: T.C.A. § 49-9-209(d)-(e) and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

1720-01-16-.04 Time Allocation

- (1) In preparing the agenda, the Chair of the Board will allocate a maximum cumulative time of sixty (60) minutes during each regular meeting for persons to address the Board or a committee of the Board.
- (2) Each speaker will be permitted to speak for a maximum of five (5) minutes. Speakers may not combine their five (5) minute allotment with another speaker and may not give any part of their time to another person. The time remaining for each speaker's remarks will be displayed by a timing device within the meeting room.

Authority: T.C.A. § 49-9-209(d)-(e) and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

1720-01-16-.05 Scheduling of Speakers. Persons who have preregistered to speak on permissible subjects in compliance with Section .02 will be scheduled on a "first come, first served" basis until the full sixty (60) minute period has been scheduled, except that no more than six (6) speakers will be scheduled to speak on the same subject.

Authority: T.C.A. § 49-9-209(d)-(e) and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

1720-01-16-.06 Notice to Scheduled Speakers

- (1) After the preregistration deadline has passed, the Board of Trustees Office will notify registrants whether they have been scheduled to speak and, if so, the specific time and location at which they will speak.
- (2) Scheduled speakers must be physically present to address the Board. Scheduled speakers who are unable to attend the meeting may not send a substitute.

Authority: T.C.A. § 49-9-209(d)-(e) and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

1720-01-16-.07 Other Terms and Conditions

- (1) Only one (1) speaker will be permitted to speak at a time.
- (2) Speakers will not be allowed to use audio/visual presentation equipment during their remarks.
- (3) Speakers may bring copies of written information to be distributed to the Board, but speakers are responsible for bringing thirty (30) copies. Speakers are not allowed to personally distribute copies to the Board or approach the Board table for any reason. When called to speak, speakers must provide the copies to the Assistant Secretary for distribution.
- (4) Failure to adhere to this standing rule may result in the suspension of a person's opportunity to address the Board at future meetings.

Authority: T.C.A. § 49-9-209(d)-(e) and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

1720-01-16-.08 Modifications. The presiding officer shall have the authority to modify the provisions of this rule in his or her discretion to extend the time allocated to permit additional speakers to address the Board or a committee of the Board, and make such other accommodations as may be necessary or advisable in his or her opinion to achieve the purposes of this rule.

Authority: T.C.A. § 49-9-209(d)-(e) and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

1720-01-16-.09 Board Action. The Board will not take any action during the part of a meeting designated for persons to address the Board. In the discretion of the presiding officer, however, a matter raised during an address to the Board may be referred for subsequent response by the University administration or for subsequent study or consideration by an appropriate Board committee. The presiding officer may also request or permit comment by the President or other members of the University administration.

Authority: T.C.A. § 49-9-209(d)-(e) and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

study or consideration by an appropriate Board committee. The presiding officer may also request or permit comment by the President or other members of the University administration.

Authority: T.C.A. § 49-9-209(d)-(e) and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

\* 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)
John Compton	x				
Commissioner Charles Hatcher				x	
Decosta Jenkins	x				
Kara Lawson	x				
Amy E. Miles	x				
Kenneth Packer (non-voting trustee)					
William C. Rhodes III	x				
Donnie Smith	x				
Kim H. White	x				
Alan D. Wilson	x				
Jamie Woodson	x				

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the University of Tennessee Board of Trustees on 03/01/2019, 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: 7/25/19

Signature: 

Name of Officer: Matthew Suggins

Title of Officer: General Counsel



Subscribed and sworn to before me on: July 25, 2019

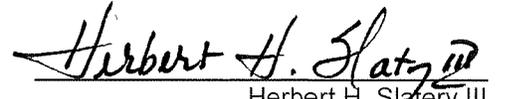
Notary Public Signature: Livia M. Loflin

My commission expires on: 8-1-2022

Agency/Board/Commission: University of Tennessee

Rule Chapter Number(s): 1720-01-16 Standing Rule Governing Requests to Address the Board of Trustees

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  
8/14/2019  
Date

**Department of State Use Only**

Filed with the Department of State on:

1/30/19

Effective on:

12/29/19



Tre Hargett  
Secretary of State

SEP 30 2019  
SECRETARY OF STATE  
PUBLICATIONS

## G.O.C. STAFF RULE ABSTRACT

<u>DEPARTMENT:</u>	University of Tennessee
<u>SUBJECT:</u>	Student Rights and Responsibilities
<u>STATUTORY AUTHORITY:</u>	There is no federal or state law or regulation mandating the promulgation of this rule.
<u>EFFECTIVE DATES:</u>	December 29, 2019 through June 30, 2020
<u>FISCAL IMPACT:</u>	None
<u>STAFF RULE ABSTRACT:</u>	<p>On March 29, 2017, the UT Board of Trustees (Board) approved substantial revisions to the student code of conduct for the University of Tennessee, Knoxville (UTK) following a comprehensive review by UTK of its student conduct policies and procedures. Prompted by the revision of the UTK student code of conduct, the Board requested that the other UT campuses conduct similar reviews of their respective student codes of conduct. As a result of those reviews, the University of Tennessee Health Science Center (UTHSC) proposes revisions to its standards of conduct for students to be consistent with the standards of conduct for students approved by the Board for UTK. UTHSC also proposes corresponding revisions to the definitions of terms used in their student codes of conduct. Finally, UTHSC proposes non-material changes in wording in several sections</p>

## **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 rule is not anticipated to have an impact 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 Regula(<http://publications.tnsosfiles.com/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

The rule is not anticipated to have an impact on local government.

**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;

On March 29, 2017, the UT Board of Trustees (Board) approved substantial revisions to the student code of conduct for The University of Tennessee, Knoxville (UTK) following a comprehensive review by UTK of its student conduct policies and procedures. Prompted by the revision of the UTK student code of conduct, the Board requested that the other UT campuses conduct similar reviews of their respective student codes of conduct. As a result of those reviews, The University of Tennessee Health Science Center (UTHSC) proposes revisions to its standards of conduct for students to be consistent with the standards of conduct for students approved by the Board for UTK. UTHSC also proposes corresponding revisions to the definitions of terms used in their student codes of conduct. Finally, UTHSC proposes non-material changes in wording in several sections.

- (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;

The University of Tennessee Board of Trustees urges adoption. The students of UTHSC are most directly affected by this rule. The non-voting student trustee did not speak against adoption of the rule. The University of Tennessee Board of Trustees did not receive any requests from the public to address the Board about 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 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;

Matthew Scoggins, General Counsel

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

Matthew Scoggins, 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

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: 09-35-19  
Rule ID(s): 9252  
File Date: 9/30/19  
Effective Date: 12/29/19

## 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
1720-03-03	Student Rights and Responsibilities
Rule Number	Rule Title
1720-03-03-.02	Definitions
1720-03-03-.04	Standards of Conduct
1720-03-03-.05	Penalties
1720-03-03-.08	Hearing Procedures
1720-03-03-.09	Student Identification Cards
1720-03-03-.10	Student Health Insurance

RULES  
OF  
THE UNIVERSITY OF TENNESSEE  
(HEALTH SCIENCE CENTER)

**CHAPTER 1720-03-03  
STUDENT RIGHTS AND RESPONSIBILITIES**

1720-03-03-.01	Introduction	1720-03-03-.06	No Contact Directives
1720-03-03-.02	Definitions	1720-03-03-.07	Interim Suspension
1720-03-03-.03	Jurisdiction	1720-03-03-.08	Hearing Procedures
1720-03-03-.04	Standards of Conduct	1720-03-03-.09	Student Identification Cards
1720-03-03-.05	Penalties/Sanctions	1720-03-03-.10	Student Health Insurance

**1720-03-03-.01 Introduction.**

- (1) Students at the University of Tennessee Health Science Center 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 and in compliance with University rules and policies. The University has established the following rules in order to advance the mission of the University by maintaining a safe and secure learning environment, 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 institutional integrity 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.
- (2) The University of Tennessee is committed to respecting students' constitutional rights. Nothing in this chapter is intended or shall be interpreted to restrict students' constitutional rights, including, but not limited to, rights of freedom of speech and assembly.
- (3) Students are responsible for being fully acquainted and for complying with the University catalog, student handbook, and other rules and policies relating to students. Failure or refusal to comply with the rules and policies established by the University may subject a student to disciplinary action up to and including permanent dismissal from the University.

Authority: T.C.A. § 49-9-209(e) and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

**1720-03-03-.02 Definitions.** The following words, terms, or phrases, when used in this Chapter, shall have the following meanings:

- (1) 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 this Chapter, the business day of the event that triggers a time period is excluded.
- (2) Disciplinary Hold: The University hold described in Section .05(3).
- (3) Faculty Member: A person hired by the University to conduct teaching, research, or supervised clinical placements.
- (4) 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.

- (5) 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.
- (6) Notice: 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 the University.
- (7) 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.
- (8) 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.
- (9) 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.
- (10) Standards of Conduct: Chapter 1720-03-03-.04.
- (11) Student: For purposes of this Chapter, 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).
- (12) 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.
- (13) UAPA: The Uniform Administrative Procedures Act, Tennessee Code Annotated § 4-5-101 et seq.
- (14) University: The University of Tennessee Health Science Center, including without limitation its campuses, centers, institutes, and constituent parts.
- (15) University-Affiliated Activity: means an activity on or off University-controlled property that is initiated, aided, authorized, sponsored, or supervised by the University.
- (16) 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.
- (17) University Official: An employee of the University, including, without limitation, faculty members and staff members, or, for purposes of this Chapter, 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.
- (18) 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.
- (19) 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.

Authority: T.C.A. § 49-9-209(e) and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

**1720-03-03-.02 DEFINITIONS.**

- (1) ~~The term "University" means the University of Tennessee Health Science Center.~~
- (2) ~~The term "student" means a person admitted, enrolled or registered for study at the University of Tennessee, either full-time or part-time, pursuing undergraduate, graduate, or professional studies, as well as non-degree students. Persons not officially registered or enrolled for a particular term but who have a continuing relationship with the University also are considered students for purposes of these rules.~~

- (3) The term "student organization" means 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.
- (4) The term "University-controlled property" means all land, buildings, facilities, grounds, structures, or any other property owned, leased, used, maintained, or operated by the University. For purposes of this rule, University-controlled property includes all streets, alleys, sidewalks, and public ways abutting such property. University-controlled property also includes computers and network systems owned, maintained, or controlled by the University or funded by the University.
- (5) The term "University-affiliated activity" means any activity on or off University-controlled property that is initiated, aided, authorized, sponsored, or supervised by the University.
- (6) The term "University official" means an employee of the University, including faculty members and staff, or for purposes of this rule a University-recognized volunteer. Student employees may be considered University officials when acting in the performance of their duties (e.g., event staff, resident assistants, and teaching assistants).
- (7) The term "member of the University community" means any person who is a student, University official, campus visitor, or participant in a University-sponsored or University-affiliated activity.
- (8) The term "possession" means 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.
- (9) The term "weapon" means 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, but not limited to, firearms (loaded and unloaded, real firearms and devices that 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.
- (10) The term "notice" means notice given in writing and transmitted by United States mail, courier service, and/or hand delivery to the address the University's Registrar has on file for the student; and/or by e-mail to the 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 e-mail address is an official method of communication used by the University about student conduct matters.
- (11) The term "coercion" means words and/or conduct that, viewed from the perspective of a reasonable person, substantially impair(s) a person's ability to voluntarily choose whether to engage in a particular sexual act (e.g., sexual contact or sexual intercourse). Coercion

is something more than mere seduction or persuasion. Coercion includes, without limitation: physical force; and words and/or conduct that would cause a reasonable person to fear imminent harm to the person's health, safety, or property or that of a third person; threat of the loss or impairment of a job benefit; threat of the loss or impairment of an academic benefit; kidnapping of the person or a third person; or disclosure of sensitive personal information (e.g., disclosure of a person's sexual orientation, gender identity, or gender expression).

(12) The term "consent" means an affirmative and voluntary agreement by a person to engage in a specific sexual act. Consent must be obtained, and the responsibility for obtaining consent rests with the individual who voluntarily and physically initiates a specific sexual act, even if the other person initiated the sexual encounter.

(a) One's own use of alcohol, drugs, or other substances does not diminish one's responsibility to obtain Consent from the other person. Moreover, another person's use of alcohol, drugs, or other substances does not diminish one's responsibility to obtain consent from that person.

(b) The term "affirmative," as used in the definition of consent, means that consent is communicated only through words and/or non-verbal actions that convey a clear agreement to engage in a specific sexual act. Whether person has communicated an agreement to engage in a specific sexual act generally is evaluated from the perspective of what a reasonable person who perceived the individual's words and/or non-verbal actions would have understood; however, in the context of a long-term relationship between persons that has involved sexual activity and a pattern of communicating consent, whether consent has been communicated may be evaluated based on a subjective standard (i.e., what did the specific person who initiated the specific sexual act conclude?). A verbal "no" (or words equivalent to "no") or the nonverbal communication of "no," even if it sounds or appears insincere or indecisive, always means that consent has not been communicated, or if previously communicated has been withdrawn. The absence of a verbal "no" or the absence of a nonverbal communication of "no" does not necessarily mean that consent has been communicated. Because interpreting non-verbal actions may lead to misunderstanding and a violation of this policy, students are strongly encouraged to err on the side of caution and not rely solely on the non-verbal actions of another person in concluding that the other person has communicated consent. The University urges students to communicate with one another before engaging in a sexual act to ensure that they both wish to engage in the same sexual act.

(c) Consent cannot be obtained by or inferred from:

1. silence that is not accompanied by non-verbal actions conveying a clear agreement to engage in a particular sexual act;
2. consent communicated by the other person on a previous occasion;
3. consent communicated to another person;
4. the other person's failure to resist physical force (however, for purposes of this policy, the other person's resistance to physical force will be viewed as a clear demonstration that the person has not communicated consent);
5. the sexual arousal of the other person;

- 6. ~~\_\_\_\_\_ a current or previous dating, romantic, intimate, or sexual relationship with the other person;~~
- 7. ~~\_\_\_\_\_ currently or previously cohabitating with the other person;~~
- 8. ~~\_\_\_\_\_ the other person's attire;~~
- 9. ~~\_\_\_\_\_ the other person's reputation;~~
- 10. ~~\_\_\_\_\_ the other person's giving or acceptance of gifts; or~~
- 11. ~~\_\_\_\_\_ the other person's extension or acceptance of an invitation to go to a private residence, room, or location.~~

(d) ~~\_\_\_\_\_ Consent is not voluntary if it is obtained by coercion. Nor is consent voluntary if it is obtained from a person who is incapacitated if one knows (or a reasonable person would know) that the other person is incapacitated. Because the incapacitation of another person may be difficult for one to discern, students are strongly encouraged to err on the side of caution (i.e., when in doubt, assume that the other person is incapacitated and therefore unable to give consent.)~~

(e) ~~\_\_\_\_\_ Consent must be continual, which means that consent must exist from the beginning to the end of each sexual encounter and for each specific sexual act that occurs during a sexual encounter. A person has a right to change his/her mind; thus, consent to engage in a specific sexual act may be withdrawn by a person at any time. A withdrawal of consent is communicated through clear words and/or clear non-verbal actions that indicate that a person no longer agrees to engage in a specific sexual act. Once a person's withdrawal of consent has been communicated, the other person must cease the specific sexual act and must obtain consent before reinitiating the specific sexual act or any other sexual act. Consent is automatically withdrawn when a person becomes incapacitated. Consent to one type of sexual contact or sexual intercourse (e.g., oral intercourse) does not constitute or imply consent for another type of sexual contact or sexual intercourse (e.g., vaginal intercourse), whether during a sexual encounter or during a previous sexual encounter. The University urges students to communicate with one another throughout a sexual encounter to ensure that any progression of sexual activity is done with consent.~~

(13) ~~\_\_\_\_\_ The term "course of conduct" means two (2) or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about another person, or interferes with another person's property.~~

(14) ~~\_\_\_\_\_ The term "dating violence" means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim of the violence. The existence of such a relationship shall be determined based on the reporting party's statement and with consideration of the following factors: (1) the length of the relationship; (2) the type of relationship; and (3) the frequency of interaction between the persons involved in the relationship. Dating violence includes, without limitation, sexual or physical abuse or the threat of such abuse.~~

(15) ~~\_\_\_\_\_ The term "domestic violence" means a felony or misdemeanor crime of violence committed:~~

(a) ~~\_\_\_\_\_ by a current or former spouse or intimate partner of the victim;~~

(b) ~~\_\_\_\_\_ by a person with whom the victim shares a child in common;~~

- (c) by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner;
  - (d) by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred; or
  - (e) by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.
- (16) The term "good faith" means having a belief in the truth of information that a reasonable person in the same situation 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.
- (17) The term "incapacitated" or "incapacitation" means a temporary or permanent physical or mental state in which a person cannot make informed, rational judgments (e.g., judgments concerning sexual contact, sexual intercourse, or sexual exploitation) because: the person lacks the physical or mental capacity to understand the nature or consequences of their words and/or conduct; and/or the person is unable to physically or verbally communicate consent. Incapacitation can be voluntary or involuntary. Incapacitation is determined based on the totality of the circumstances. Incapacitation may result from: sleep; unconsciousness; intermittent consciousness; temporary or permanent physical or mental disability; involuntary physical restraint; or the influence of alcohol, drugs, or other substances, including, without limitation, substances used to facilitate sexual assault (e.g., Rohypnol, Ketamine, GHB, and Burundanga). Alcohol and drugs are common causes of incapacitation. When alcohol or drugs are involved, Incapacitation is a state beyond mere drunkenness or intoxication. The impact of alcohol and drugs varies from person to person; however, warning signs of incapacitation may include, without limitation: lack of control over physical movements (e.g., inability to dress/undress without assistance; inability to walk without assistance); lack of awareness of circumstances or surroundings; vomiting; unresponsiveness; and inability to communicate coherently. A person who is under the age of eighteen (18) (i.e., a minor) is incapable of giving consent; however, a person who is at least the age of thirteen (13) and less than the age of eighteen (18) is capable of giving consent to sexual acts with another person who is less than four (4) years older than them.
- (18) The term "reasonable person" means 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.
- (19) The term "relationship violence" means dating violence and/or domestic violence.
- (20) The term "retaliation" means an act (i) taken by a student (including an act taken through a third party) because of another person's participation in a protected activity (ii) that would discourage a reasonable person from engaging in protected activity. Protected activity includes a person's good faith: (i) opposition to conduct prohibited under the Standards of Conduct; (ii) report to the University about conduct prohibited under the Standards of Conduct to the University; (iii) participation (or reasonable expectation of participation) in any manner in an investigation, meeting, hearing, or interim measure; or (iv) exercise of rights or responsibilities under any provision of the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act. 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 an act taken against a person's family, friends, advisors, and/or other persons reasonably expected to provide

information in connection with a University investigation or hearing.

- (21) The term "sexual assault" means engaging in sexual contact or sexual intercourse with another person without the consent of that person.
- (22) The term "sexual contact" means the intentional touching of another person (including another person's clothing) in a sexual manner with any part of one's body or with any object. Sexual contact also means intentionally causing another person to touch themselves (including their clothing) in a sexual manner. Whether a touching was done in a sexual manner is determined from the perspective of a sober, objectively reasonable person in the same situation and with the same sex, gender identity, and sexual orientation as the person who was touched.
- (23) The term "sexual exploitation" means an act or attempted act by a person for the purpose of sexual arousal or gratification, financial gain, or other personal benefit through the abuse or exploitation of another person's sexuality. Examples of sexual exploitation include, without limitation: observation of a person who is undressed or engaging in sexual contact or sexual intercourse, without the consent of all persons being observed (in a place where a person has a reasonable expectation of privacy); creation or distribution of images, photography, an audiotape, or a videotape of sexual contact, sexual intercourse, or a person's intimate parts (i.e., genitalia, groin, breasts, buttocks) without the consent of all persons being recorded or photographed; prostituting another person; allowing others to observe, either in person or electronically, sexual contact or sexual intercourse without the consent of all persons involved in the sexual contact or sexual intercourse (in a place where a person has a reasonable expectation of privacy); and knowingly exposing another person to a sexually transmitted infection without informing the other person that one has a sexually transmitted infection.
- (24) The term "sexual harassment" means with respect to the conduct of a student, unwelcome conduct of a sexual nature 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 the term "sexual harassment" be construed to prohibit speech protected by the First Amendment to the United States Constitution (e.g., mere insulting or offensive speech). Sexual harassment may include, for example, unwelcome sexual advances, requests for sexual favors, and acts of sexual assault. The term "sexual harassment" also means, with respect to the conduct of a student-employee (when acting as a student-employee): unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when: submission to such conduct is made either explicitly or implicitly a term or condition of an individual's participation in an educational program; submission to or rejection of such conduct by an individual is used as the basis for evaluation or advancement in an educational program; or such conduct has the purpose or effect of unreasonably interfering with an individual's educational performance or creates an intimidating, hostile or offensive educational environment. Sexual harassment is a form of sex discrimination. To determine whether conduct constitutes sexual harassment, consideration shall be given to the totality of the circumstances, including without limitation: the context in which the conduct and/or words occurred; and the frequency, nature, and severity of the conduct and/or words.
- (25) The term "sexual intercourse" means the penetration, no matter how slight, of the vagina or anus with any body part or object; or oral penetration by a sex organ of another person.
- (26) The term "sexual misconduct" means sexual harassment, sexual assault, and/or sexual exploitation.
- (27) The term "stalking" means engaging in a course of conduct directed at a specific person

that would cause a reasonable person to: (1) fear for the person's safety or the safety of others; or (2) suffer substantial emotional distress. For the purposes of this definition, the term "reasonable person" means a reasonable person under similar circumstances and with similar identities to the victim.

~~(28) The term "substantial emotional distress" means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.~~

### **1720-03-03-.03 Jurisdiction.**

- (1) The Standards of Conduct, Chapter 1720-03-03-.04, apply to conduct that occurs on University-controlled property.
- (2) The University also has the discretion to discipline a student for an act in violation of the Standards of Conduct that occurs off University-controlled property if the conduct adversely affects the interests of the University, including, but not limited to, conduct which:
  - (a) Occurs in connection with a University-affiliated activity, including, but not limited to, an overseas study program or a clinical, field, internship, or in-service experience;
  - (b) Involves another member of the University community; or
  - (c) Threatens, or indicates that the student may pose a threat to, the health or safety of him/herself or others or the security of any person's property, including, but not limited to, alcohol-related offenses, drug-related offenses, arson, battery, fraud, hazing, participation in group violence, rape, sexual assault or misconduct, stalking, and theft.
- (3) The Standards of Conduct have been adopted in furtherance of the University's interests and serve to supplement, rather than substitute for, the enforcement of the civil and criminal law. Accordingly, University disciplinary action may be instituted against a student charged with conduct that potentially violates both the criminal law and the Standards of Conduct without regard to the pendency of criminal charges or civil litigation. At the discretion of the Chief Student Affairs Officer, or his/her designee, disciplinary action relating to a violation of the Standards of Conduct may be carried out prior to, simultaneously with, or following criminal proceedings. Students accused of violating the Standards of Conduct may not challenge the University disciplinary proceedings 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 not yet adjudicated.
- (4) 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 conduct is not discovered by the University until after a degree is awarded). Should a student withdraw from the University with disciplinary charges pending, the student's academic record and/or ability to register for classes may be encumbered by the appropriate University office.
- (5) Graduate or professional programs within the University may initiate charges against students for alleged violations of professional standards or ethics as a separate issue or as an extension of alleged acts of academic dishonesty or other violations of the Standards of Conduct.

Authority: T.C.A. § 49-9-209(e) and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

**1720-03-03-.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 Code.
- (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.
- (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, 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 this Chapter, 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; 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 (e.g., interim suspension), 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.

Authority: T.C.A. § 49-9-209(e) and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

**1720-03-03-.04 STANDARDS OF CONDUCT.** A student or student organization may be disciplined for the following types of misconduct:

- (1) ~~Cheating, plagiarism, or any other act of academic dishonesty, including but not limited to an act in violation of the Honor Code.~~
- (2) ~~Providing false information to a University official.~~
- (3) ~~Falsifying, distorting, misrepresenting, or withholding information in connection with a University investigation or hearing.~~
- (4) ~~Forging, altering, destroying, falsifying, or misusing records, identification, or documents, whether in print or electronic form.~~
- (5) ~~Causing physical harm to any person (including oneself); endangering the health or safety of any person (including oneself); 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, which is defined as 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) ~~Engaging in sexual misconduct, relationship violence, or stalking.~~
- (8) ~~Invasion of another person's privacy when that person has a reasonable expectation of privacy, including, but not limited to, 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 unauthorized recordings by any means is also prohibited.~~
- (9) ~~Theft, misappropriation, unauthorized possession, or unauthorized sale of private or public property, including but not limited to University-controlled property.~~
- (10) ~~Vandalizing, destroying, damaging, engaging in conduct that reasonably could cause damage to, or misusing private or public property, including but not limited to University-controlled property.~~
- (11) ~~Participating in hazing. "Hazing" is defined as 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 or safety of that student, or which induces or coerces a student to endanger his or her mental or physical health or safety. "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.~~
- (12) ~~Engaging in disorderly conduct, which means: 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.~~

- (13) ~~Engaging in lewd, indecent, or obscene conduct. "Lewd, indecent, or obscene" conduct includes, but is not limited to, public exposure of one's sexual organs, public urinating, and public sexual acts.~~
- (14) ~~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.~~
- (15) ~~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.~~
- (16) ~~Possessing, using, or duplicating University keys, access cards, or identification cards without authorization; possessing, using, or entering University-controlled property without authorization.~~
- (17) ~~Theft, misuse, or unauthorized use of information technology facilities, resources, or access codes, including, but not limited to: 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.~~
- (18) ~~Possessing, using, storing, or manufacturing any weapon or any facsimile of a 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.~~
- (19) ~~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.~~
- (20) ~~Consuming, manufacturing, possessing, distributing, dispensing, selling, or being under the influence of alcoholic beverages, if prohibited by federal, state, or local law.~~
- (21) ~~Providing an alcoholic beverage to a person younger than twenty-one (21) years of age, unless permitted by law.~~
- (22) ~~Using, manufacturing, possessing, distributing, selling, dispensing, or being under the influence of drugs or 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.~~
- (23) ~~Failing to pay a University bill, account, or other University financial obligation.~~
- (24) ~~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; 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.~~
- (25) ~~Failing to appear at a University hearing, including, but not limited to, a hearing of a~~

University judicial board, following a request to appear either as a party or as a witness.

- (26) ~~Violating the terms of an interim suspension, a no-contact directive, or a disciplinary penalty imposed by the University.~~
- (27) ~~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.~~
- (28) ~~Violating a University policy or rule, including but not limited to University policies or rules relating to facilities use, smoking, the acceptable use of information technology resources, research or service 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.~~
- (29) ~~Committing an act that is prohibited by local, state, or federal law.~~
- (30) ~~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.~~
- (31) ~~Engaging in retaliation.~~

#### **1720-03-03-.05 PENALTIES Sanctions.**

- (1) Disciplinary ~~penalties~~ sanctions are primarily intended to educate students and student organizations about appropriate behavior, encourage students and student organizations to take responsibility for misconduct, promote the personal and professional development of students, discourage other students and student organizations from violating the Standards of Conduct, and protect members of the University community. The ~~penalties~~ sanctions imposed should be 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). Efforts are made to keep ~~penalties~~ sanctions consistent with those applied to similar cases. In recognition of the fact that the University is an educational institution with a rehabilitative point of view, ~~penalties~~ sanctions are assessed in accordance with conditions accompanying each offense. Consideration may also be given to the student's or student organization's conduct record; the student's or student organization's responsiveness to the conduct process; whether the student acted in self-defense, and, if so, whether the amount of force used was reasonable under the circumstances; student academic classification; and other aggravating or mitigating factors. ~~Penalties~~ Sanctions may be applied retroactively to the date of the offense. Intoxication or impairment because of alcohol, drugs, chemicals, or other substances does not diminish or excuse a student violation of the Standards of Conduct. Additionally, official violation notifications are given by the appropriate office, and official records are maintained in that office.
- (2) The following ~~penalties~~ sanctions may be imposed on any student found to have violated the Standards of Conduct:
  - (a) **Disciplinary Warning.** A disciplinary warning is a notice that the student is violating or has violated the Standards of Conduct. It is used for minor violations and consists of a restatement of the regulation violated with an official warning concerning future action.

- (b) Disciplinary Reprimand. A disciplinary reprimand is used for minor violations of the Standards of Conduct when it is evident the misconduct occurred with knowledge and awareness of applicable Standards of Conduct. A reprimand indicates that further violations will result in more severe disciplinary actions. Reprimands may be given to students in either verbal or written form.
- (c) Loss of Privilege. Loss of privilege is a penalty/sanction imposed most commonly in cases involving violation of University rules governing hours, social standards, intramural sports, or misuse of University facilities. The loss of privilege is ordinarily established for a specific period of time, and actions are recorded in appropriate records. Privileges that may be lost include, but are not limited to, scholarships, stipends, participation in extracurricular activities (e.g. intramurals), participation in social activities, and use of certain University-controlled property (e.g., information technology resources).
- (d) Education. Students may be required to attend classes, at their own expense, dealing with issues such as the consequences of alcohol or drug use, civility, ethics, or other topics as deemed appropriate by the Chief Student Affairs Officer or his/her designee.
- (e) Restitution. Restitution may be required in situations that involve destruction, damage, or loss of property, or unreimbursed medical expenses resulting from physical injury. Restitution may take the form of a monetary payment or appropriate service to repair or otherwise compensate for the destruction, damage, or loss.
- (f) Disciplinary Probation. Disciplinary probation means that a student is permitted to remain in the University on a probationary status. Should a violation occur during probation, the student is normally suspended. Disciplinary probation is recorded on the student's personnel file in the Office of Student Affairs. Conditions of probation are specific to the individual case and may include loss of eligibility to serve as a student organization officer or participation in major student activities. Any specific probation conditions are described in a personal letter to the student. Other conditions of probation are specific to each individual case and may include a requirement of community service or other requirement or restriction.
- (g) Suspension. The penalty/sanction of suspension is imposed in cases of serious or repeated misconduct or a violation of probation. A student who is suspended shall have his/her registration cancelled and is not eligible to apply for readmission for a designated period of time. Suspensions are always recorded on the student's permanent record. (Persons suspended from the University may not return to the campus for the duration of their suspension, except to conduct official business with an administrative officer or faculty member).
- (h) Permanent Dismissal. Permanent dismissal means that a student is permanently barred from matriculating as a student at the University of Tennessee Health Science Center. This penalty/sanction is used when the violation of one (1) or more of the Standards of Conduct is deemed so serious as to warrant total and permanent disassociation from the University community without the possibility of re-enrollment; or when, by his/her repeated violation of the Standards of Conduct, a student exhibits blatant disregard for the health and safety of other members of the University community or the University's right to establish rules of conduct.
- (i) Revocation of Degree. Revocation of a degree means revoking a student's a degree already awarded by the University. Revocation of a degree shall be approved by the University of Tennessee Board of Trustees.

- (3) A disciplinary hold may be placed on a student's account until the completion of the student disciplinary process and/or until the student satisfies the terms and conditions of any penalties imposed. A student who, at the time of commencement, is subject to a continuing disciplinary penalty or an unresolved disciplinary charge shall not be awarded a degree before the conclusion of all penalties and/or resolution of all disciplinary charges.
- (4) The following penalties/sanctions may be imposed on a student organization found to have violated the Standards of Conduct:
- (a) **Disciplinary Warning.** A disciplinary warning is used for minor violations of the Standards of Conduct and consists of a restatement of the Standard of Conduct violated with an official warning concerning future action.
  - (b) **Loss of Privilege.** This penalty/sanction is intended to serve as a reminder of the Standards of Conduct and is for a specific period of time. Examples of privileges that may be lost include participating in extracurricular activities (e.g., intramurals), housing privileges, participating in social activities, and using certain University-controlled property.
  - (c) **Education.** Student organizations or their representatives may be required to attend classes, at their own expense, dealing with issues such as the consequences of alcohol or drug use, civility, ethics, or other topics as deemed appropriate by the Chief Student Affairs Officer, Student Conduct Officer, and/or his/her designee.
  - (d) **Restitution.** Restitution may be required in situations that involve destruction, damage, or loss of property, or unreimbursed medical expenses resulting from physical injury. Restitution may take the form of a monetary payment or appropriate service to repair or otherwise compensate for the destruction, damage, or loss.
  - (e) **Social Probation.** This penalty/sanction 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 Chief Student Affairs Officer or his/her designee.
  - (f) **Disciplinary Probation.** Disciplinary probation means that a student organization is permitted to retain University registration on a probationary status. Violation of the Standards of Conduct during the period of disciplinary probation may result in more serious penalties/sanctions, including revocation of University registration.
  - (g) **Revocation of University Registration.** In cases of serious misconduct, a student organization's University registration may be revoked.
- (5) More than one (1) of the penalties/sanctions listed above may be imposed for any single violation of the Standards of Conduct.
- (6) Except for an interim suspension, disciplinary penalties/sanctions shall not become effective until after opportunities for appeal have been exhausted. Penalties/Sanctions may be applied retroactively to the date of the offense. Coursework performed while disciplinary charges are pending or disciplinary proceedings are underway shall be considered conditional. Coursework may be affected or disregarded based on a final finding of misconduct or the penalties/sanctions imposed, which may result in loss of course credit, a loss of tuition and/or fees, a delay in the awarding of a degree, or revocation of a degree

that was awarded prior to a final decision in the disciplinary proceeding.

Authority: T.C.A. § 49-9-209(e) and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

**1720-03-03-.06 No Contact Directive.** In cases involving allegations of assault, injury, sexual abuse, harassment, or in cases where there is reason to believe continued contact between a student/student organization and specific persons, including complainants and witnesses, may interfere with those persons' security, safety or ability to participate effectively in work or studies, the Chief Student Affairs Officer, or his/her designee, may require that the student/student organization not have verbal, physical, or written contact with specific persons for a definite or indefinite period of time. The student/student organization will receive notice of the no contact directive. 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/student organization. In addition to an internal University no contact directive, complainants are advised that other similar options exist and can be obtained from law enforcement and civil and criminal courts.

Authority: T.C.A. § 49-9-209(e) and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

**1720-03-03-.07 Interim Suspension.**

- (1) When the Chief Student Affairs Officer or his/her designee has reasonable cause to believe that a student's or student organization's continued presence on University-controlled property or at University-affiliated activities poses a significant risk of substantial harm to the health or safety of others or to property or poses an ongoing threat to the disruption of, or interference with, the normal operations of the University, the Chief Student Affairs Officer or his/her designee may impose an interim suspension prior to the conclusion of a full hearing on the alleged misconduct.
- (2) An interim suspension shall be confirmed by a notice that explains the basis for the interim suspension and shall remain in effect until the conclusion of a full hearing in accordance with the rules of the University of Tennessee, which shall be held without undue delay.
- (3) Within three (3) business days of the imposition of the suspension, the student or student organization shall be offered an opportunity to appear personally before the Chief Student Affairs Officer or his/her designee in order to discuss the following issues only: (i) the reliability of the information concerning the student's or student organization's conduct; and (ii) whether the conduct and surrounding circumstances reasonably indicate that the student's or student organization's continued presence on University-controlled property or at University-affiliated activities poses a significant risk of substantial harm to the health or safety of others or to property or poses an imminent threat of disruption of or interference with the normal operations of the University.
- (4) During an interim suspension, the student or student organization shall be denied access to University-controlled property, including residence halls, and all other University-affiliated activities or privileges for which the student might otherwise be eligible, as the Chief Student Affairs Officer or his/her designee determines in his/her sole discretion to be appropriate. A student or student organization who receives an interim suspension and violates the terms of the interim suspension shall be subject to further disciplinary action and may be treated as a trespasser. Permission to be on University-controlled property or participate in University-affiliated activities may be granted by the Chief Student Affairs Officer or his/her designee.

Authority: T.C.A. § 49-9-209(e) and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

## 1720-03-03-.08 Hearing Procedures.

- (1) 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) In cases involving allegations of sexual assault, dating violence, domestic violence, or stalking, the student conduct process 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. 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 alleged victim/complainant with equivalent rights as the accused student/respondent during the student conduct process.
- (2) Unless otherwise specified in the published ~~policies and procedures~~rules of the ~~UT Health Science Center~~University, a student charged with misconduct or who is entitled to an opportunity for a hearing will, upon request, be provided a hearing in accordance with the following procedures:
  - (a) Notice - A person charged with misconduct will receive written notification of the following:
    1. The substance of the charge(s) against him/her.
    2. The disciplinary action taken or proposed.
    3. His/her right to a hearing should he/she wish to contest the charge(s) or action.
    4. To whom a request for a hearing should be addressed.
    5. That a request for a hearing must be made within five (5) days of the person's receipt of this notice.
    6. His/her right to be accompanied by no more than one (1) advisor during the hearing, including but not limited to a parent, spouse, friend, or attorney. The role of the advisor shall be limited to providing advice or support to the accused student. Even if accompanied by an advisor, the accused student is responsible for presenting his/her own case to the hearing panel. An advisor is not permitted to: introduce evidence; raise objections; present arguments; address directly the members of the hearing panel, the student conduct officer, or any witnesses participating in the hearing; or otherwise participate in the hearing. In consideration of the limited role of the advisor, and of the compelling interest of the University to expeditiously conclude the matter, a hearing shall not be delayed due to the unavailability of an advisor.
    7. His/her rights to a hearing under the Uniform Administrative Procedures Act, T.C.A. § 4-5-101 et seq. ("UAPA"). In the absence of a voluntary written waiver of his/her rights to a hearing under the provisions of the UAPA, a requested hearing will be conducted in accordance with the University's rules for conducting contested case proceedings under the UAPA, Chapter 1720-01-05, and the hearing procedures in this Section

.08 shall not apply.

- (b) Notice of Hearing Concerning Allegations of Sexual Assault, Dating Violence, Domestic Violence, or Stalking. At least seventy-two (72) hours prior to a hearing under Section .08(3) concerning allegations of sexual assault, dating violence, domestic violence, or stalking, the University shall provide the accused student/respondent with notice of the following: (1) the time, place, and date of the hearing; (2) the name of each witness the University expects to present at the hearing and those the University may present if the need arises; (3) 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 (4) 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) Hearing Panel or Hearing Examiner - A requested hearing will be provided by a panel of individuals or a hearing examiner, selected in accordance with policies of ~~UT Health Science Center~~ the University or, in the absence of applicable policies or procedures, by the Chancellor of the ~~UT Health Science Center~~ University or his/her designee. The hearing will be conducted by a panel chairman similarly selected. Panel members shall be impartial and anyone lacking such impartiality shall recuse himself or be removed by the Chancellor of the ~~UT Health Science Center~~ University or his/her designee upon the request of any party to a hearing. Neither the Student Conduct Officer nor a person who investigated the allegations of misconduct against the accused student shall be a member of the hearing panel or advise the hearing panel.
- (d) Hearing Process - The chairman of a hearing panel or hearing examiner will conduct the hearing, without regard to technical rules of procedure, in such manner as will best serve the cause of justice within the following general guidelines:
1. Each party to a hearing will be afforded a full and fair opportunity to present all evidence including witnesses, reasonably relating to the charge or action at issue; evidence which is irrelevant, immaterial, repetitious or voluminous may be limited.
  2. The hearing panel or examiner will consider all evidence presented, giving due consideration to the credibility or weight of each item presented; technical rules of evidence will not apply.
  3. Each party will have the right to question opposing witnesses.
  4. A record will be made of the hearing procedures. However, defects in the record will not invalidate the proceedings.
  5. The University will have the burden of providing, by a preponderance of the evidence, the truth of the charge(s) at issue. Where the charge(s) is found to be true, the person charged will have the burden of proving that the disciplinary action taken or proposed is arbitrary, capricious, or unreasonable.
  6. Following the conclusion of the hearing, the hearing panel or examiner will consider the evidence and present written findings within a reasonable time.

7. In cases involving an allegation of sexual assault or misconduct, the hearing procedures shall be modified to afford the alleged victim all of the rights described in Chapter 1720-03-03-.08(2)(f).

(e) 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, the University will investigate and resolve reports of sexual misconduct, relationship violence, ~~and stalking, and/or retaliation~~ in accordance with the University's Policy on Sexual Misconduct, Relationship Violence, ~~and Stalking, and/or Retaliation~~. In a case involving an allegation of sexual misconduct, relationship violence, ~~or stalking, and/or retaliation~~ the accused student/respondent and the alleged victim/complainant shall have the rights outlined in the University's Policy on Sexual Misconduct, Relationship Violence, ~~and Stalking, and/or Retaliation~~. Additionally, in a case involving sexual assault, dating violence, domestic violence, ~~or stalking and/or retaliation~~, 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.

(3) The decision of any board or administrative officer of The University of Tennessee is subject to review by the Chancellor.

~~(4) For purposes of this rule, the term "student" shall mean a student or a student organization.~~

~~(5)~~(4) When, in the judgment of the Chancellor of the University of Tennessee, Health Science Center, conditions are such that an emergency exists which makes it impossible for the system of judicial boards to function, he/she may suspend the procedural regulations described in this Chapter. If the procedures are suspended, he may substitute for them arrangements for handling disciplinary matters that will ensure the orderly functioning of the University and at the same time safeguard the basic rights of the students.

Authority: T.C.A. § 49-9-209(e) and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

#### **1720-03-03-.09 Student Identification Cards.**

(1) All currently registered students are required to have a ~~UT Health Science Center Student~~University Identification Card. Lost and found I.D. cards should be reported to the Office of Campus Safety and Security. Replacement for lost cards may be obtained from the Office of Campus Safety and Security. A replacement charge will be assessed.

(2) In order to determine the identity of students, all students are required to present their University identification cards promptly on request of a University police officer or member of the administration or faculty of the University. Identification cards will not ordinarily be retained; however, a card may be retained if an emergency situation exists or if the card may be needed as evidence. The retained card, if valid, will be returned to the student as soon as possible.

Authority: T.C.A. § 49-9-209(e) and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

**1720-03-03-.10 Student Health Insurance.** All students are required to obtain basic health care and medical care insurance to protect themselves, their families, their professional health care associates and providers. The student may elect to enroll in the ~~UT Health Science Center~~University's student health insurance plan or obtain equivalent health insurance with a private carrier. Students who fail to furnish proof

of insurance coverage will be prevented from completing their registration for that academic term.

Authority: T.C.A. § 49-9-209(e) and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

Rule 1720-03-03-.10 Student Health Insurance is amended by deleting the words "UT Health Science Center" and replacing them with "University," so that as amended the rule reads:

1720-03-03-.10 Student Health Insurance. All students are required to obtain basic health care and medical care insurance to protect themselves, their families, their professional health care associates and providers. The student may elect to enroll in the University's student health insurance plan or obtain equivalent health insurance with a private carrier. Students who fail to furnish proof of insurance coverage will be prevented from completing their registration for that academic term.

Authority: T.C.A. § 49-9-209(e) and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

\* 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)
John Compton	x				
Commissioner Charles Hatcher				x	
Decosta Jenkins	x				
Kara Lawson	x				
Amy E. Miles	x				
Kenneth Packer (non-voting trustee)					
William C. Rhodes III	x				
Donnie Smith	x				
Kim H. White	x				
Alan D. Wilson	x				
Jamie Woodson	x				

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the University of Tennessee Board of Trustees on 03/01/2019, 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: 7/25/19

Signature: 

Name of Officer: Matthew Scoggins

Title of Officer: General Counsel

Subscribed and sworn to before me on: July 25, 2019

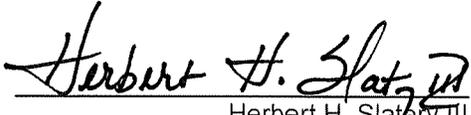
Notary Public Signature: Lina M. Loflin

My commission expires on: 8-1-2022

Agency/Board/Commission: University of Tennessee (Health Science Center)

Rule Chapter Number(s): 1720-03-03 Student Rights and Responsibilities

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. Slatyer III  
Attorney General and Reporter

9/23/2019  
Date

**Department of State Use Only**

Filed with the Department of State on: 9/30/19

Effective on: 12/29/19

  
Tre Hargett  
Secretary of State

2019 SEP 30 PM 12:28  
SECRETARY OF STATE  
PUBLICATIONS

## G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: University of Tennessee

DIVISION:

SUBJECT: Student Rights and Responsibilities

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

EFFECTIVE DATES: December 29, 2019 through June 30, 2020

FISCAL IMPACT: None

STAFF RULE ABSTRACT: On March 29, 2017, the UT Board of Trustees (Board) approved substantial revisions to the student code of conduct for The University of Tennessee, Knoxville (UTK) following a comprehensive review by UTK of its student conduct policies and procedures. Prompted by the revision of the UTK student code of conduct, the Board requested that the other UT campuses conduct similar reviews of their respective student codes of conduct. As a result of those reviews, the University of Tennessee at Martin (UTM) proposes revisions to its standards of conduct for students to be consistent with the standards of conduct for students approved by the board for UTK. UTM also proposes corresponding revisions to the definitions of terms used in their student codes of conduct.

## **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 rule is not anticipated to have an impact 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 Regula(<http://publications.tnsosfiles.com/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

The rule is not anticipated to have an impact on local government.

**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;

On March 29, 2017, the UT Board of Trustees (Board) approved substantial revisions to the student code of conduct for The University of Tennessee, Knoxville (UTK) following a comprehensive review by UTK of its student conduct policies and procedures. Prompted by the revision of the UTK student code of conduct, the Board requested that the other UT campuses conduct similar reviews of their respective student codes of conduct. As a result of those reviews, The University of Tennessee at Martin (UTM) proposes revisions to its standards of conduct for students to be consistent with the standards of conduct for students approved by the Board for UTK. UTM also proposes corresponding revisions to the definitions of terms used in their student codes of conduct.

- (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;

The University of Tennessee Board of Trustees urges adoption. The students of UTM are most directly affected by this rule. The non-voting student trustee did not speak against adoption of the rule. The University of Tennessee Board of Trustees did not receive any requests from the public to address the Board about 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 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;

Matthew Scoggins, General Counsel

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

Matthew Scoggins, 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

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: 09-36-19  
Rule ID(s): 9253  
File Date: 9/30/19  
Effective Date: 12/29/19

## 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
1720-05-01	Student Rights and Responsibilities
Rule Number	Rule Title
1720-05-01- 02	Definitions
1720-05-01- 04	Standards of Conduct
1720-05-01- 05	Penalties
1720-05-01- 08	Hearing Procedures

RULES  
OF  
THE UNIVERSITY OF TENNESSEE  
(MARTIN)

**CHAPTER 1720-05-01  
STUDENT RIGHTS AND RESPONSIBILITIES**

1720-05-01-.01	Introduction	1720-05-01-.08	Hearing Procedures
1720-05-01-.02	Definitions	1720-05-01-.09	Appeals
1720-05-01-.03	Jurisdiction	1720-05-01-.10	Emergency Powers
1720-05-01-.04	Standards of Conduct	1720-05-01-.11	Involuntary Medical Withdrawal or Suspension
1720-05-01-.05	<del>Penalties</del> Sanctions	1720-05-01-.12	Inspection and Search Policies
1720-05-01-.06	No Contact Directives	1720-05-01-.13	Academic Dishonesty
1720-05-01-.07	Interim Suspension		

**1720-05-01-.01 Introduction.**

- (1) Students at the University of Tennessee at Martin 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 and in compliance with University rules and policies. The University has established the following rules in order to advance the mission of the University by maintaining a safe and secure learning environment; 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 institutional integrity 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.
- (2) The University is committed to respecting students' constitutional rights. Nothing in this chapter is intended or shall be interpreted to restrict students' constitutional rights, including, but not limited to, rights of freedom of speech and assembly.
- (3) Students are responsible for being fully acquainted and for complying with the University catalog, handbook, and other rules and policies relating to students. Failure or refusal to comply with the rules and policies established by the University may subject a student to disciplinary action up to and including permanent dismissal from the University.

**1720-05-01-.02 Definitions.** The following words, terms, or phrases, when used in this Chapter, shall have the following meanings:

- (1) 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 this Chapter, the business day of the event that triggers a time period is excluded.
- (2) Disciplinary Hold: The University hold described in Section .05(3).
- (3) Faculty Member: A person hired by the University to conduct teaching, research, or supervised clinical placements.
- (4) 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.

- (5) 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.
- (6) Notice: 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 the University.
- (7) 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.
- (8) 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.
- (9) 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.
- (10) Standards of Conduct: Chapter 1720-05-01-.04.
- (11) Student: For purposes of this Chapter, 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).
- (4)(12) 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.
- (13) "UAPA" means the Uniform Administrative Procedures Act, Tennessee Code Annotated § 4-5-101 et seq.
- (14) University: The University of Tennessee Health Science Center, including without limitation its campuses, centers, institutes, and constituent parts.
- (15) University-Affiliated Activity: means an activity on or off University-controlled property that is initiated, aided, authorized, sponsored, or supervised by the University.
- (16) 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.
- (17) University Official: An employee of the University, including, without limitation, faculty members and staff members, or, for purposes of this Chapter, 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.
- (18) 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.
- (19) 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.

**1720-05-01-.02 DEFINITIONS.**

- (1) ~~The term "University" means the University of Tennessee at Martin.~~
- (2) ~~The term "student" means a person admitted, enrolled or registered for study at the University of Tennessee, either full-time or part-time, pursuing undergraduate, graduate, or professional studies, as well as non-degree students. Persons not officially registered or enrolled for a particular term but who have a continuing relationship with the University also are considered students for purposes of these rules.~~
- (3) ~~The term "student organization" means 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.

- (4) The term "University-controlled property" means all land, buildings, facilities, grounds, structures, or any other property owned, leased, used, maintained, or operated by the University. For purposes of this rule, University-controlled property includes all streets, alleys, sidewalks, and public ways abutting such property. University-controlled property also includes computers and network systems owned, maintained, or controlled by the University or funded by the University.
- (5) The term "University-affiliated activity" means any activity on or off University-controlled property that is initiated, aided, authorized, sponsored, or supervised by the University.
- (6) The term "University official" means an employee of the University, including faculty members and staff, or for purposes of this rule a University-recognized volunteer. Student employees may be considered University officials when acting in the performance of their duties (e.g., event staff, resident assistants, and teaching assistants).
- (7) The term "member of the University community" means any person who is a student, University official, campus visitor, or participant in a University-sponsored or University-affiliated activity.
- (8) The term "possession" means 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.
- (9) The term "weapon" means 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, but not limited to, firearms (loaded and unloaded, real firearms and devices that 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.
- (10) The term "notice" means notice given in writing and transmitted by United States mail, courier service, and/or hand delivery to the address the University's Registrar has on file for the student; and/or by e-mail to the 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 e-mail address is an official method of communication used by the University about student conduct matters.
- (11) The term "coercion" means words and/or conduct that, viewed from the perspective of a reasonable person, substantially impair(s) a person's ability to voluntarily choose whether to engage in a particular sexual act (e.g., sexual contact or sexual intercourse). Coercion is something more than mere seduction or persuasion. Coercion includes, without

limitation: physical force; and words and/or conduct that would cause a reasonable person to fear imminent harm to the person's health, safety, or property or that of a third person; threat of the loss or impairment of a job benefit; threat of the loss or impairment of an academic benefit; kidnapping of the person or a third person; or disclosure of sensitive personal information (e.g., disclosure of a person's sexual orientation, gender identity, or gender expression).

(12) The term "consent" means an affirmative and voluntary agreement by a person to engage in a specific sexual act. Consent must be obtained, and the responsibility for obtaining consent rests with the individual who voluntarily and physically initiates a specific sexual act, even if the other person initiated the sexual encounter.

(a) One's own use of alcohol, drugs, or other substances does not diminish one's responsibility to obtain Consent from the other person. Moreover, another person's use of alcohol, drugs, or other substances does not diminish one's responsibility to obtain consent from that person.

(b) The term "affirmative," as used in the definition of consent, means that consent is communicated only through words and/or non-verbal actions that convey a clear agreement to engage in a specific sexual act. Whether person has communicated an agreement to engage in a specific sexual act generally is evaluated from the perspective of what a reasonable person who perceived the individual's words and/or non-verbal actions would have understood; however, in the context of a long-term relationship between persons that has involved sexual activity and a pattern of communicating consent, whether consent has been communicated may be evaluated based on a subjective standard (i.e., what did the specific person who initiated the specific sexual act conclude?). A verbal "no" (or words equivalent to "no") or the nonverbal communication of "no," even if it sounds or appears insincere or indecisive, always means that consent has not been communicated, or if previously communicated has been withdrawn. The absence of a verbal "no" or the absence of a nonverbal communication of "no" does not necessarily mean that consent has been communicated. Because interpreting non-verbal actions may lead to misunderstanding and a violation of this policy, students are strongly encouraged to err on the side of caution and not rely solely on the non-verbal actions of another person in concluding that the other person has communicated consent. The University urges students to communicate with one another before engaging in a sexual act to ensure that they both wish to engage in the same sexual act.

(c) Consent cannot be obtained by or inferred from:

1. silence that is not accompanied by non-verbal actions conveying a clear agreement to engage in a particular sexual act;

2. consent communicated by the other person on a previous occasion;

3. consent communicated to another person;

4. the other person's failure to resist physical force (however, for purposes of this policy, the other person's resistance to physical force will be viewed as a clear demonstration that the person has not communicated consent);

5. the sexual arousal of the other person;

- 6. ~~\_\_\_\_\_ a current or previous dating, romantic, intimate, or sexual relationship with the other person;~~
- 7. ~~\_\_\_\_\_ currently or previously cohabitating with the other person;~~
- 8. ~~\_\_\_\_\_ the other person's attire;~~
- 9. ~~\_\_\_\_\_ the other person's reputation;~~
- 10. ~~\_\_\_\_\_ the other person's giving or acceptance of gifts; or~~
- 11. ~~\_\_\_\_\_ the other person's extension or acceptance of an invitation to go to a private residence, room, or location.~~

~~(d) \_\_\_\_\_ Consent is not voluntary if it is obtained by coercion. Nor is consent voluntary if it is obtained from a person who is incapacitated if one knows (or a reasonable person would know) that the other person is incapacitated. Because the incapacitation of another person may be difficult for one to discern, students are strongly encouraged to err on the side of caution (i.e., when in doubt, assume that the other person is incapacitated and therefore unable to give consent.)~~

~~(e) \_\_\_\_\_ Consent must be continual, which means that consent must exist from the beginning to the end of each sexual encounter and for each specific sexual act that occurs during a sexual encounter. A person has a right to change his/her mind; thus, consent to engage in a specific sexual act may be withdrawn by a person at any time. A withdrawal of consent is communicated through clear words and/or clear non-verbal actions that indicate that a person no longer agrees to engage in a specific sexual act. Once a person's withdrawal of consent has been communicated, the other person must cease the specific sexual act and must obtain consent before reinitiating the specific sexual act or any other sexual act. Consent is automatically withdrawn when a person becomes incapacitated. Consent to one type of sexual contact or sexual intercourse (e.g., oral intercourse) does not constitute or imply consent for another type of sexual contact or sexual intercourse (e.g., vaginal intercourse), whether during a sexual encounter or during a previous sexual encounter. The University urges students to communicate with one another throughout a sexual encounter to ensure that any progression of sexual activity is done with consent.~~

~~(13) \_\_\_\_\_ The term "course of conduct" means two (2) or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about another person, or interferes with another person's property.~~

~~(14) \_\_\_\_\_ The term "dating violence" means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim of the violence. The existence of such a relationship shall be determined based on the reporting party's statement and with consideration of the following factors: (1) the length of the relationship; (2) the type of relationship; and (3) the frequency of interaction between the persons involved in the relationship. Dating violence includes, without limitation, sexual or physical abuse or the threat of such abuse.~~

~~(15) \_\_\_\_\_ The term "domestic violence" means a felony or misdemeanor crime of violence committed:~~

- ~~(a) \_\_\_\_\_ by a current or former spouse or intimate partner of the victim;~~

- (b) ~~by a person with whom the victim shares a child in common;~~
  - (c) ~~by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner;~~
  - (d) ~~by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred; or~~
  - (e) ~~by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.~~
- (16) ~~The term "good faith" means having a belief in the truth of information that a reasonable person in the same situation 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.~~
- (17) ~~The term "incapacitated" or "incapacitation" means a temporary or permanent physical or mental state in which a person cannot make informed, rational judgments (e.g., judgments concerning sexual contact, sexual intercourse, or sexual exploitation) because: the person lacks the physical or mental capacity to understand the nature or consequences of their words and/or conduct; and/or the person is unable to physically or verbally communicate consent. Incapacitation can be voluntary or involuntary. Incapacitation is determined based on the totality of the circumstances. Incapacitation may result from: sleep; unconsciousness; intermittent consciousness; temporary or permanent physical or mental disability; involuntary physical restraint; or the influence of alcohol, drugs, or other substances, including, without limitation, substances used to facilitate sexual assault (e.g., Rohypnol, Ketamine, GHB, and Burundanga). Alcohol and drugs are common causes of incapacitation. When alcohol or drugs are involved, Incapacitation is a state beyond mere drunkenness or intoxication. The impact of alcohol and drugs varies from person to person; however, warning signs of incapacitation may include, without limitation: lack of control over physical movements (e.g., inability to dress/undress without assistance; inability to walk without assistance); lack of awareness of circumstances or surroundings; vomiting; unresponsiveness; and inability to communicate coherently. A person who is under the age of eighteen (18) (i.e., a minor) is incapable of giving consent; however, a person who is at least the age of thirteen (13) and less than the age of eighteen (18) is capable of giving consent to sexual acts with another person who is less than four (4) years older than them.~~
- (18) ~~The term "reasonable person" means 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.~~
- (19) ~~The term "relationship violence" means dating violence and/or domestic violence.~~
- (20) ~~The term "retaliation" means an act (i) taken by a student (including an act taken through a third party) because of another person's participation in a protected activity (ii) that would discourage a reasonable person from engaging in protected activity. Protected activity includes a person's good faith: (i) opposition to conduct prohibited under the Standards of Conduct; (ii) report to the University about conduct prohibited under the Standards of Conduct to the University; (iii) participation (or reasonable expectation of participation) in any manner in an investigation, meeting, hearing, or interim measure; or (iv) exercise of rights or responsibilities under any provision of the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act. 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 an act taken against a person's family, friends, advisors, and/or other persons reasonably expected to provide information in connection with a University investigation or hearing.

- (21) ~~The term "sexual assault" means engaging in sexual contact or sexual intercourse with another person without the consent of that person.~~
- (22) ~~The term "sexual contact" means the intentional touching of another person (including another person's clothing) in a sexual manner with any part of one's body or with any object. Sexual contact also means intentionally causing another person to touch themselves (including their clothing) in a sexual manner. Whether a touching was done in a sexual manner is determined from the perspective of a sober, objectively reasonable person in the same situation and with the same sex, gender identity, and sexual orientation as the person who was touched.~~
- (23) ~~The term "sexual exploitation" means an act or attempted act by a person for the purpose of sexual arousal or gratification, financial gain, or other personal benefit through the abuse or exploitation of another person's sexuality. Examples of sexual exploitation include, without limitation: observation of a person who is undressed or engaging in sexual contact or sexual intercourse, without the consent of all persons being observed (in a place where a person has a reasonable expectation of privacy); creation or distribution of images, photography, an audiotape, or a videotape of sexual contact, sexual intercourse, or a person's intimate parts (i.e., genitalia, groin, breasts, buttocks) without the consent of all persons being recorded or photographed; prostituting another person; allowing others to observe, either in person or electronically, sexual contact or sexual intercourse without the consent of all persons involved in the sexual contact or sexual intercourse (in a place where a person has a reasonable expectation of privacy); and knowingly exposing another person to a sexually transmitted infection without informing the other person that one has a sexually transmitted infection.~~
- (24) ~~The term "sexual harassment" means with respect to the conduct of a student, unwelcome conduct of a sexual nature 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 the term "sexual harassment" be construed to prohibit speech protected by the First Amendment to the United States Constitution (e.g., mere insulting or offensive speech). Sexual harassment may include, for example, unwelcome sexual advances, requests for sexual favors, and acts of sexual assault. The term "sexual harassment" also means, with respect to the conduct of a student-employee (when acting as a student-employee): unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when: submission to such conduct is made either explicitly or implicitly a term or condition of an individual's participation in an educational program; submission to or rejection of such conduct by an individual is used as the basis for evaluation or advancement in an educational program; or such conduct has the purpose or effect of unreasonably interfering with an individual's educational performance or creates an intimidating, hostile or offensive educational environment. Sexual harassment is a form of sex discrimination. To determine whether conduct constitutes sexual harassment, consideration shall be given to the totality of the circumstances, including without limitation: the context in which the conduct and/or words occurred; and the frequency, nature, and severity of the conduct and/or words.~~
- (25) ~~The term "sexual intercourse" means the penetration, no matter how slight, of the vagina or anus with any body part or object; or oral penetration by a sex organ of another person.~~

- ~~(26) The term "sexual misconduct" means sexual harassment, sexual assault, and/or sexual exploitation.~~
- ~~(27) The term "stalking" means engaging in a course of conduct directed at a specific person that would cause a reasonable person to: (1) fear for the person's safety or the safety of others; or (2) suffer substantial emotional distress. For the purposes of this definition, the term "reasonable person" means a reasonable person under similar circumstances and with similar identities to the victim.~~
- ~~(28) The term "substantial emotional distress" means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.~~
- ~~(29)(1) The term "UAPA" means the Uniform Administrative Procedures Act, Tennessee Code Annotated § 4-5-101 et seq.~~

### **1720-05-01-.03 Jurisdiction.**

- (1) The Standards of Conduct, Chapter 1720-05-01-.04, apply to conduct that occurs on University-controlled property.
- (2) The University also has the discretion to discipline a student for an act in violation of the Standards of Conduct that occurs off University-controlled property if the conduct adversely affects the interests of the University, including, but not limited to, conduct which:
  - (a) Occurs in connection with a University-affiliated activity, including, but not limited to, an overseas study program or a clinical, field, internship, or in-service experience;
  - (b) Involves another member of the University community; or
  - (c) Threatens, or indicates that the student may pose a threat to, the health or safety of him/herself or others or the security of any person's property, including, but not limited to, alcohol-related offenses, drug-related offenses, arson, battery, fraud, hazing, participation in group violence, rape, sexual assault or misconduct, stalking, and theft.
- (3) The Standards of Conduct have been adopted in furtherance of the University's interests and serve to supplement, rather than substitute for, the enforcement of the civil and criminal law. Accordingly, University disciplinary action may be instituted against a student charged with conduct that potentially violates both the criminal law and the Standards of Conduct without regard to the pendency of criminal charges or civil litigation. At the discretion of the Vice Chancellor for Student Affairs, or his/her designee, disciplinary action relating to a violation of the Standards of Conduct may be carried out prior to, simultaneously with, or following criminal proceedings. Students accused of violating the Standards of Conduct may not challenge the University disciplinary proceedings 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 not yet adjudicated.
- (4) 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 conduct is not discovered by the University until after a degree is awarded). Should a student withdraw from the

University with disciplinary charges pending, the student's academic record and/or ability to register for classes may be encumbered by the appropriate University office.

- (5) Graduate or professional programs within the University may initiate charges against students for alleged violations of professional standards or ethics as a separate issue or as an extension of alleged acts of academic dishonesty or other violations of the Standards of Conduct.

**1720-05-01-.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 Code.
- (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.
- (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, 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 this Chapter, 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; 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 (e.g., interim suspension), 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.

~~1720-05-01-.04 STANDARDS OF CONDUCT.~~ A student or student organization may be disciplined for the following types of misconduct:

- ~~(1) — Cheating, plagiarism, or any other act of academic dishonesty as described in Chapter 1720-05-01-.13.~~
- ~~(2) — Providing false information to a University official.~~
- ~~(3) — Falsifying, distorting, misrepresenting, or withholding information in connection with a University investigation or hearing.~~
- ~~(4) — Forging, altering, destroying, falsifying, or misusing records, identification, or documents, whether in print or electronic form.~~
- ~~(5) — Causing physical harm to any person (including oneself); endangering the health or safety of any person (including oneself); 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, which is defined as 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) — Engaging in sexual misconduct, relationship violence, or stalking.~~
- ~~(8) — Invasion of another person's privacy when that person has a reasonable expectation of privacy, including, but not limited to, 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 unauthorized recordings by any means is also prohibited.~~
- ~~(9) — Theft, misappropriation, unauthorized possession, or unauthorized sale of private or public property, including but not limited to University-controlled property.~~
- ~~(10) — Vandalizing, destroying, damaging, engaging in conduct that reasonably could cause damage to, or misusing private or public property, including but not limited to University-controlled property.~~
- ~~(11) — Participating in hazing. "Hazing" is defined as 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 or safety of that student, or which induces or coerces a student to endanger his or her mental or physical health or safety. "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.~~

- (12) ~~Engaging in disorderly conduct, which means: 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.~~
- (13) ~~Engaging in lewd, indecent, or obscene conduct. "Lewd, indecent, or obscene" conduct includes, but is not limited to, public exposure of one's sexual organs, public urinating, and public sexual acts.~~
- (14) ~~Engaging in speech, either orally or in writing, which is directed to inciting or producing imminent lawless action and is likely to incite or produce such action.~~
- (15) ~~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.~~
- (16) ~~Possessing, using, or duplicating University keys, access cards, or identification cards without authorization; possessing, using, or entering University-controlled property without authorization.~~
- (17) ~~Theft, misuse, or unauthorized use of information technology facilities, resources, or access codes, including, but not limited to: 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.~~
- (18) ~~Possessing, using, storing, or manufacturing any weapon or any facsimile of a weapon on University-controlled property or in connection with a University-affiliated activity, unless authorized in writing by the Department of Public Safety.~~
- (19) ~~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.~~
- (20) ~~Consuming, manufacturing, possessing, distributing, dispensing, selling, or being under the influence of alcoholic beverages, if prohibited by federal, state, or local law.~~
- (21) ~~Providing an alcoholic beverage to a person younger than twenty-one (21) years of age, unless permitted by law.~~
- (22) ~~Using, manufacturing, possessing, distributing, selling, dispensing, or being under the influence of drugs or 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.~~
- (23) ~~Failing to pay a University bill, account, or other University financial obligation.~~

- ~~(24) 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; 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.~~
- ~~(25) Failing to appear at a University hearing, including, but not limited to, a hearing of a University judicial board, following a request to appear either as a party or as a witness.~~
- ~~(26) Violating the terms of an interim suspension, a no-contact directive, or a disciplinary penalty imposed by the University.~~
- ~~(27) 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.~~
- ~~(28) Violating a University policy or rule, including but not limited to University policies or rules relating to facilities use, smoking, the acceptable use of information technology resources, research or service 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.~~
- ~~(29) Committing an act that is prohibited by local, state, or federal law.~~
- ~~(30) 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.~~
- ~~(31)(1) Engaging in retaliation.~~

**1720-05-01-.05 PENALTIES Sanctions.**

- (1) Disciplinary penalties sanctions are primarily intended to educate students and student organizations about appropriate behavior, encourage students and student organizations to take responsibility for misconduct, promote the personal and professional development of students, discourage other students and student organizations from violating the Standards of Conduct, and protect members of the University community. The penalties sanctions imposed should be 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 student's or student organization's conduct record; the student's or student organization's responsiveness to the conduct process; whether the student acted in self-defense, and, if so, whether the amount of force used was reasonable under the circumstances; student academic classification; and other aggravating or mitigating factors.
- (2) The following penalties sanctions may be imposed on any student found to have violated the Standards of Conduct:
  - (a) Warning. A warning is a notice that the student is violating or has violated the Standards of Conduct. A disciplinary warning is used for minor infractions and consists of a restatement of the Standard(s) of Conduct violated with an official warning concerning future behavior.
  - (b) Loss of Privilege. A loss of privilege is intended to serve as a reminder of the

Standards of Conduct and is for a specific period of time. Privileges that may be lost include, but are not limited to, scholarships, stipends, participation in extracurricular activities (e.g. intramurals), housing privileges, participation in social activities, and use of certain University-controlled property (e.g., information technology resources).

- (c) Education. Students may be required to attend classes, at their own expense, dealing with issues such as the consequences of alcohol or drug use, civility, ethics, or other topics as deemed appropriate by the Vice Chancellor for Student Affairs or his/her designee.
- (d) Restitution. Restitution may be required in situations that involve destruction, damage, or loss of property, or unreimbursed medical expenses resulting from physical injury. Restitution may take the form of a monetary payment or appropriate service to repair or otherwise compensate for the destruction, damage, or loss.
- (e) Disciplinary Probation. Disciplinary probation permits a student to remain at the University on probationary status but with the understanding that a future violation of the Standards of Conduct may result in suspension. Conditions of probation include loss of eligibility to join a student organization and to serve as an officer in a student organization. Other conditions are specific to the individual case and may include ineligibility to participate in certain student activities. Probation may be for a definite or indefinite period.
- (f) Suspension for a Specific Period of Time. Suspension for a specific period of time means that the student is withdrawn from the University and is not eligible to apply for readmission for a designated period of time. Usually, the designated period of time does not exceed one (1) calendar year. Persons suspended from the University may not return to the campus for the duration of their suspension, except to conduct official business with an administrative officer or faculty member. Upon return to the University following a suspension for a specific period of time, the student shall be placed on indefinite disciplinary probation.
- (g) Indefinite Suspension. Indefinite suspension is imposed in cases of serious or repeated misconduct or in cases in which the prognosis for rehabilitation is uncertain. Indefinite suspension means that the student is withdrawn from the University for an unspecified period of time but typically for a minimum of one (1) calendar year from the effective date of the indefinite suspension. A student who receives the penalty of indefinite suspension is not eligible to apply for readmission until the student successfully petitions the University Council to lift the suspension. Upon return to the University following an indefinite suspension, the student shall be placed on indefinite disciplinary probation.
- (h) Permanent Dismissal. Permanent dismissal means that a student is permanently barred from matriculating as a student on the Martin campus. This penalty is used when the violation of one (1) or more Standards of Conduct is deemed so serious as to warrant total and permanent disassociation from the University community without the possibility of re-enrollment; or when, by his/her repeated violation of the Standards of Conduct, a student exhibits blatant disregard for the health and safety of other members of the University community or the University's right to establish rules of conduct.
- (i) Revocation of Degree. Revocation of a degree means revoking a degree already awarded to a student by the University. Revocation of a degree shall be approved by the University of Tennessee Board of Trustees.

- (3) A disciplinary hold may be placed on a student's account until the completion of the student disciplinary process and/or until the student satisfies the terms and conditions of any penalties/sanctions imposed. A student who, at the time of commencement, is subject to a continuing disciplinary penalty or an unresolved disciplinary charge shall not be awarded a degree before the conclusion of all penalties/sanctions and/or resolution of all disciplinary charges.
- (4) The following penalties/sanctions may be imposed on a student organization found to have violated the Standards of Conduct:
- (a) **Warning.** A warning is a notice that the student organization is violating or has violated the Standards of Conduct. A disciplinary warning is used for minor infractions and consists of a restatement of the Standard(s) of Conduct violated with an official warning concerning future behavior.
  - (b) **Loss of Privilege.** A loss of privilege is intended to serve as a reminder of the Standards of Conduct and is for a specific period of time. Examples of privileges that may be lost include participating in extracurricular activities (e.g., intramurals), housing privileges, participating in social activities, and using certain University-controlled property.
  - (c) **Education.** Student organizations and/or their representatives may be required to attend classes, at their own expense, dealing with issues such as the consequences of alcohol or drug use, civility, ethics, or other topics as deemed appropriate by the Vice Chancellor for Student Affairs or his/her designee.
  - (d) **Restitution.** Restitution may be required in situations that involve destruction, damage, or loss of property, or unreimbursed medical expenses resulting from physical injury. Restitution may take the form of a monetary payment or appropriate service to repair or otherwise compensate for the destruction, damage, or loss.
  - (e) **Social Probation.** This penalty prohibits a student organization from sponsoring or participating in specified social activities. While on social probation, a student organization may not host social events (e.g., mixers, date parties, formals, and band parties) or participate in University-affiliated activities (e.g., Homecoming). Any exceptions to social probation must be approved, in advance, by the Vice Chancellor for Student Affairs or his/her designee.
  - (f) **Disciplinary Probation.** Disciplinary probation means that a student organization is permitted to retain University registration on a probationary status. Violation of the Standards of Conduct during the period of disciplinary probation may result in more serious penalties/sanctions, including revocation of University registration.
  - (g) **Revocation of University Registration.** In cases of serious misconduct, a student organization's University registration may be revoked.
- (5) More than one (1) of the penalties/sanctions listed above may be imposed for any single violation of the Standards of Conduct. Penalties/Sanctions may be applied retroactively to the date of the offense.
- (6) Intoxication or impairment because of alcohol, drugs, chemicals, or other substances does not diminish or excuse a violation of the Standards of Conduct.
- (7) Except for an interim suspension, disciplinary penalties/sanctions shall not become

effective until after opportunities for appeal have been exhausted. ~~Penalties~~Sanctions may be applied retroactively to the date of the offense. Coursework performed while disciplinary charges are pending or disciplinary proceedings are underway shall be considered conditional. Coursework may be affected or disregarded based on a final finding of misconduct or the penalty imposed, which may result in loss of course credit, a loss of tuition and/or fees, a delay in the awarding of a degree, or revocation of a degree that was awarded prior to a final decision in the disciplinary proceeding.

**1720-05-01-.06 No Contact Directive.** In cases involving allegations of assault, injury, sexual abuse, harassment, or in cases where there is reason to believe continued contact between a student/student organization and specific persons, including complainants and witnesses, may interfere with those persons' security, safety or ability to participate effectively in work or studies, the Vice Chancellor for Student Affairs, or his/her designee, may require that the student/student organization not have verbal, physical, or written contact with specific persons for a definite or indefinite period of time. The student/student organization will receive written or electronic notice of the no contact directive. 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/student organization. In addition to an internal University no contact directive, complainants are advised that other similar options exist and can be obtained from law enforcement and civil and criminal courts.

**1720-05-01-.07 Interim Suspension.**

- (1) When the Vice Chancellor for Student Affairs or his/her designee has reasonable cause to believe that a student's or student organization's continued presence on University-controlled property or at University-affiliated activities poses a significant risk of substantial harm to the health or safety of others or to property or poses an ongoing threat to the disruption of, or interference with, the normal operations of the University, the Vice Chancellor for Student Affairs or his/her designee may impose an interim suspension prior to the conclusion of a full hearing on the alleged misconduct.
- (2) An interim suspension shall be confirmed by a written statement that explains the basis for the interim suspension and shall remain in effect until the conclusion of a full hearing in accordance with the rules of the University of Tennessee, which shall be held without undue delay. The statement shall be delivered to the student in person, to the address the University has on file for the student, or to the student's University-provided e-mail account. The statement shall be delivered in person or via e-mail to the advisor to the student organization.
- (3) Within three (3) business days of the imposition of the suspension, the student or student organization shall be offered an opportunity to appear personally before the Vice Chancellor for Student Affairs or his/her designee in order to discuss the following issues only: (i) the reliability of the information concerning the student's conduct; and (ii) whether the conduct and surrounding circumstances reasonably indicate that the student's or student organization's continued presence on University-controlled property or at University-affiliated activities poses a significant risk of substantial harm to the health or safety of others or to property or poses an imminent threat of disruption of or interference with the normal operations of the University.
- (4) During an interim suspension, the student or student organization shall be denied access to University-controlled property, including residence halls, and all other University-affiliated activities or privileges for which the student or student organization might otherwise be eligible, as the Vice Chancellor for Student Affairs or his/her designee determines in his/her sole discretion to be appropriate. A student or student organization who receives an interim suspension and violates the terms of the interim suspension shall be subject to further disciplinary action and may be treated as a trespasser.

Permission to be on University-controlled property or participate in University-affiliated activities may be granted by the Vice Chancellor for Student Affairs or his/her designee.

- (5) When a student is placed on interim suspension from the University, he/she may be assigned a grade of "W" or "I," whichever is deemed appropriate by the faculty member involved.

#### **1720-05-01-.08 Hearing Procedures.**

- (1) 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) In cases involving allegations of sexual assault, dating violence, domestic violence, or stalking, the student conduct process 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. 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 alleged victim/complainant with equivalent rights as the accused student/respondent during the student conduct process.
- (2) A student charged with violating the Standards of Conduct, Chapter 1720-05-01-.04, shall be provided written notice of:
  - (a) The substance of the charge(s) against him/her;
  - (b) The disciplinary action taken or proposed; and
  - (c) His/her rights to a hearing should he/she wish to contest the charge(s) and information concerning the process for requesting a hearing, including the requirement that a request for a hearing before the Disciplinary Hearing Board must be made within five (5) days of the student's receipt of the notice of the charges against him/her.
- (3) A student charged with violating the Standards of Conduct, Chapter 1720-05-01-.04, shall have the following options for a hearing:
  - (a) An administrative hearing before the Student Conduct Officer;
  - (b) A hearing before the Disciplinary Hearing Board; or
  - (c) A hearing in accordance with the University's rules for conducting contested case proceedings under the Uniform Administrative Procedures Act ("UAPA Hearing"). All disciplinary cases that may result in suspension or permanent dismissal of a student, the revocation of a degree, or the revocation of registration of a student organization are subject to the contested case provisions of the UAPA. The University's procedures for conducting contested case hearings under the UAPA are contained in Chapter 1720-01-05, and the University's rules concerning waivers of contested case proceedings are contained in Chapter 1720-01-3. Disciplinary hearings will be conducted in accordance with the University's procedures for conducting contested case proceedings under the UAPA unless the student waives those procedures in writing and elects to have his or her case resolved in accordance with Section .08(3) or Section .08(4).

- (4) Notice of Hearing Concerning Allegations of Sexual Assault, Dating Violence, Domestic Violence, or Stalking. At least seventy-two (72) hours prior to a hearing under Section .08(3) concerning allegations of sexual assault, dating violence, domestic violence, or stalking, the University shall provide the accused student/respondent with notice of the following: (1) the time, place, and date of the hearing; (2) the name of each witness the University expects to present at the hearing and those the University may present if the need arises; (3) 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 (4) 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.
- (5) Administrative Hearing. A student charged with violating the Standards of Conduct has a right to resolve a disciplinary case through an administrative hearing with the Student Conduct Officer by accepting responsibility for violating the Standards of Conduct. Following the student's written acceptance of responsibility and written waiver of the right to a hearing under the UAPA, the Student Conduct Officer will assess a penalty that is appropriate under Chapter 1720-05-01-.05. Following the assessment of the penalty, the student may acknowledge the acceptance of the penalty in writing or appeal the penalty to the Vice Chancellor for Student Affairs in accordance with Chapter 1720-05-01-.09. A student who resolves a disciplinary case through an administrative hearing with the Student Conduct Officer may only appeal the penalty to the Vice Chancellor for Student Affairs.
- (6) Disciplinary Hearing Board.
- (a) The Disciplinary Hearing Board is an ad hoc board composed of five (5) members of the University Council, in addition to the Vice Chancellor for Student Affairs, who shall serve as the non-voting chairperson of the Disciplinary Hearing Board. The Disciplinary Hearing Board hears cases of alleged violations of the Standards of Conduct and other cases deemed appropriate by the Vice Chancellor for Student Affairs. The Vice Chancellor for Student Affairs shall select the members of the Disciplinary Hearing Board from the membership of the University Council. A majority vote of the members present is required for all decisions of the board.
- (b) A request for a hearing before the Disciplinary Hearing Board shall be made within five (5) days of the student's receipt of the notice of the charges against him/her. A hearing shall be scheduled promptly after receipt of the request for a hearing. A student shall be notified of the date, place, and time for the hearing at least seventy-two (72) hours in advance of the hearing. A student has no right to have a hearing before the Disciplinary Hearing Board unless the student waives the provisions of the UAPA in writing.
- (c) Members of the Disciplinary Hearing Board shall be impartial and anyone lacking such impartiality shall recuse himself/herself. The accused student has the right to challenge any member of the Disciplinary Hearing Board for good cause and request that he/she be dismissed and replaced. The chairperson of the Board determines whether to dismiss and replace a member of the Disciplinary Hearing Board. Neither the Student Conduct Officer nor a person who investigated the allegations of misconduct against the accused student shall be a member of the Disciplinary Hearing Board or advise the Disciplinary Hearing Board.

- (d) The chairperson of the Disciplinary Hearing Board will conduct the hearing, without regard to technical rules of procedures in such a manner as will best serve the cause of justice within the following general guidelines:
1. An accused student has a right to a hearing closed to the public. In cases involving more than one (1) student, the chairperson may permit the hearings concerning each student to be conducted separately.
  2. The chairperson shall rule on all motions, objections, and other procedural issues. The chairperson shall ascertain that the accused student has been advised of the charges against him/her and shall then read a statement describing the charges. A student who fails to appear before the Disciplinary Hearing Board following proper notice shall be deemed to have waived his/her rights to be present during the hearing, to know the evidence against him/her, to present evidence in his/her own behalf, and to exercise reasonable cross-examination of witnesses appearing against him/her. This waiver shall become effective if the student fails to appear at the designated time and place of the hearing unless, at least twenty-four (24) hours prior to the hearing, the student communicates in writing to the Dean of Students good cause for granting a continuance of the hearing. However, no student may be found to have violated the Standards of Conduct solely because the student failed to appear before the Disciplinary Hearing Board. In all cases, the evidence in support of the charges shall be presented to and considered by the Disciplinary Hearing Board.
  3. The accused shall enter a plea of responsible or not responsible. If a responsible plea is entered, he/she shall be advised of the maximum penalty, and the Board shall review the circumstances of the case and make appropriate decisions or recommendations regarding the penalty.
  4. The accused student may be accompanied by no more than one (1) advisor during the hearing, including but not limited to a parent, spouse, friend, or attorney. The role of the advisor shall be limited to providing advice or support to the accused student. Even if accompanied by an advisor, the accused student is responsible for presenting his/her own case to the Disciplinary Hearing Board. An advisor is not permitted to: introduce evidence; raise objections; present arguments; directly address the members of the Disciplinary Hearing Board, the Student Conduct Officer, or any witnesses participating in the hearing; or otherwise participate in the hearing. In consideration of the limited role of the advisor, and of the compelling interest of the University to expeditiously conclude the matter, a hearing shall not be delayed due to the unavailability of an advisor. The accused student shall inform the Student Conduct Officer of the name of the student's advisor, if any, at least three (3) days before the hearing before the Disciplinary Hearing Board.
  5. Each party to a hearing shall be given an opportunity to make opening and closing statements.
  6. Each party to a hearing shall be afforded a full and fair opportunity to present all evidence, including witnesses, reasonably relating to the charge or action at issue. Each party will have the right to question opposing witnesses. Technical rules of evidence will not apply. Evidence which is irrelevant, immaterial, repetitious or voluminous may

be limited or excluded. Hearsay evidence is admissible. If a not responsible plea has been entered, evidence in mitigation of the alleged offense shall be presented only if the Board has determined that the accused student is responsible for the violation.

7. The Student Conduct Officer shall present the case on behalf of the University. The University shall have the burden of proving, by a preponderance of the evidence, the truth of the charge(s) at issue. Where the charge(s) is found to be true, the accused student shall have the burden of proving that the disciplinary action taken or proposed is arbitrary, capricious, or unreasonable.
  8. The Board will consider all evidence presented, giving due consideration to the credibility or weight of each item presented. During Board deliberations all persons except the Board members shall be excused from the hearing room. The decision shall be based solely upon the evidence presented. No mention will be made during the hearing on innocence or guilt of the student's previous disciplinary record, unless appropriate as rebuttal to character evidence introduced by the accused.
  9. After a determination of responsibility by the Board, the Student Conduct Officer, on behalf of the University, shall present the previous disciplinary record of the accused student if any, and evidence of any other aggravating circumstances, to the Board together with the recommendation of the Student Conduct Officer as to an appropriate penalty.
  10. After presentation of evidence by the Student Conduct Officer, the accused shall be allowed to present character evidence, evidence of mitigating circumstances, and an alternative penalty recommendation.
  11. After the Board determines the penalty, the accused student shall be advised in writing of its decision within forty-eight (48) hours of the hearing.
  12. A record will be made of the hearing procedures. However, defects in the record will not invalidate the proceedings. The results of the Board's decision shall be kept on official University forms. If a verbatim record of the hearing is prepared, it shall be retained in the custody of the Office of Student Conduct and considered a confidential disciplinary record.
  13. Appeals from decisions of the Disciplinary Hearing Board may be made to the Vice Chancellor for Student Affairs in accordance with Chapter 1720-05-01-.09.
  14. In cases involving an allegation of sexual assault or misconduct, the hearing procedures shall be modified to afford the alleged victim all of the rights described in Chapter 1720-05-01-.08(8). The Disciplinary Hearing Board may consider evidence introduced by the alleged victim as part of the University's proof.
- (7) 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, the University will investigate and resolve reports of sexual misconduct, relationship violence, ~~and~~ stalking and/or retaliation in accordance with the University's Policy on Sexual Misconduct, Relationship Violence, ~~and~~ Stalking and/or Retaliation. In a

case involving an allegation of sexual misconduct, relationship violence, ~~or~~ stalking and/or retaliation, the accused student/respondent and the alleged victim/complainant shall have the rights outlined in the University's Policy on Sexual Misconduct, Relationship Violence, ~~and Stalking~~ and/or Retaliation. Additionally, in a case involving sexual assault, dating violence, domestic violence, ~~or~~ stalking and/or retaliation, 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.

(8) ~~For purposes of this rule, the term "student" shall mean a student or a student organization.~~

#### **1720-05-01-.09 Appeals.**

- (1) Appeal. A decision of the Disciplinary Hearing Board, or a decision of the Student Conduct Officer concerning a penalty following an administrative hearing, may be appealed to the Vice Chancellor for Student Affairs.
  - (a) The request for appeal shall be submitted in writing to the Vice Chancellor for Student Affairs within seven (7) calendar days of written notice of the decision of the Disciplinary Hearing Board or Student Conduct Officer. If the seventh day falls on a weekend or holiday, the time is extended to the next regular workday.
  - (b) The request for appeal shall contain:
    1. A statement that the student or student organization appeals the decision of the Disciplinary Hearing Board or Student Conduct Officer; and
    2. A brief statement of the grounds for the appeal.
  - (c) All appeals to the Vice Chancellor for Student Affairs are written and heard based upon the record made before the Disciplinary Hearing Board.
  - (d) Pending the outcome of an appeal, the penalty specified in the decision of the Disciplinary Hearing Board shall not be imposed.
- (2) The Vice Chancellor for Student Affairs may:
  - (a) Affirm the decision of the Disciplinary Hearing Board or Student Conduct Officer;
  - (b) Amend the decision of the Disciplinary Hearing Board or Student Conduct Officer;
  - (c) Return the case to the Disciplinary Hearing Board or Student Conduct Officer with instructions for reconsideration of the case; or
  - (d) Overturn the decision of the Disciplinary Hearing Board.
- (3) The decision of any board or administrative officer of the University of Tennessee at Martin is subject to review by the Chancellor.

**1720-05-01-.10 Emergency Powers.** When, in the judgment of the Chancellor of The University of Tennessee at Martin, conditions are such that an emergency exists which makes it impossible for the system of judicial boards to function, he/she may suspend these procedural regulations. If the procedures are suspended, he/she may substitute for them arrangements for handling disciplinary matters that will

insure the orderly functioning of the University and at the same time safeguard the basic rights of the students and student organizations.

**1720-05-01-.11 Involuntary Medical Withdrawal or Suspension.**

- (1) When a student is unable to effectively pursue his/her academic work, or when his/her behavior is disruptive to the normal educational processes of the University, or constitutes a threat to members of the University community, due to, among other things, alcohol use, drug use, or a physical or mental incapacitating condition, he/she may be withdrawn or temporarily suspended from the University as hereinafter provided.
- (1) **Withdrawal.** A student may be withdrawn from the University only after an evaluation of his/her mental and physical condition by a panel of at least three (3) persons appointed by the Vice Chancellor for Student Affairs. The student shall be notified of the reasons for the evaluation and given an opportunity to present evidence to the committee. The committee's findings and recommendations shall be forwarded to the Vice Chancellor for Student Affairs, who will notify the student in writing of his/her decision.
- (2) **Temporary Suspension.** Whenever a student, because of his/her mental or physical condition constitutes a danger to persons or property, or when his/her behavior is disruptive to the normal educational processes of the University, he/she may be suspended from the University, for a reasonable period of time, by the Vice Chancellor for Student Affairs. If the University does not withdraw the student in accordance with procedures outlined above, he/she may return to the University at the end of the suspension period.
- (3) **Grades.** When a student is withdrawn or temporarily suspended from the University, he/she may be assigned a grade of "W" or "I," whichever is deemed appropriate by the faculty member involved.
- (4) **Readmission.**
  - (a) A student who is involuntarily withdrawn under this rule may not be readmitted to the University before the start of the next semester or without the approval of the Vice Chancellor for Student Affairs. The student shall also meet all of the admission requirements of the University and of the school or college in which he/she wishes to be readmitted.
  - (b) A student shall submit a written request for permission to reapply to the University with the Vice Chancellor for Student Affairs by October 1 for Spring enrollment, by February 1 for Summer enrollment, and by May 1 for Fall enrollment. The student's written request shall include an explanation of why the Vice Chancellor for Student Affairs should allow the student to reapply and an explanation of the student's plan to transition successfully back into the academic community.
  - (c) The Vice Chancellor for Student Affairs may require the student to provide the panel of individuals who recommended that the student be involuntarily withdrawn with proof that the condition that caused the withdrawal is no longer present or that the condition is under control through treatment such that the student does not present a direct threat to the health or safety of him/herself or others and will not disrupt the normal educational processes of the University. Proof may consist of a current medical or mental health evaluation, demonstration of ongoing medical or mental health treatment, and a plan for treatment upon readmission. The panel may request any other information or documentation that it deems necessary. In exceptional circumstances, the panel

may request a second, independent opinion of a qualified medical or mental health professional paid for by the University. In cases where the Vice Chancellor for Student Affairs has imposed other conditions for readmission, it is the responsibility of the student to provide documentation of compliance with those conditions.

- (d) The panel's recommendation concerning reenrollment or readmission shall be provided to the Vice Chancellor for Student Affairs, who will notify the student in writing of his/her decision. The decision of the Vice Chancellor for Student Affairs is final and may not be appealed.

#### **1720-05-01-.12 Inspection and Search Policies.**

- (1) Entry by University authorities into occupied rooms in residence halls will be divided into three (3) categories; inspection, search, and emergency. Inspection is defined as the entry into an occupied room by University authorities in order to ascertain the health and safety conditions in the room, to check the physical condition of the room, to make repairs on facilities, or to perform cleaning and janitorial operations. Search is defined as the entry into an occupied room by on-campus authorities for the purpose of investigating suspected violations of campus regulations. An emergency situation exists when the delay necessary to obtain a search authorization constitutes an apparent danger to person, property, or the building itself.
- (2) Inspection: Scheduled inspections by on-campus authorities with the exception of daily janitorial operations shall be preceded, if possible, by twenty-four (24) hours' notice to the residents. During the inspection there will be no search of drawers, closets, or personal belongings. This policy is applicable for residence halls and fraternity houses.
- (3) Search: On-campus authorities will not enter a room for purposes of search without the permission of the resident unless they have a campus authorization to search, authorized by the Vice Chancellor for Student Affairs or his/her designee, which specifies the reasons for the search and the objects or information sought, or unless they enter in compliance with federal or state law. If possible, the student should be present during the search. Normally these searches will not be made unless the Vice Chancellor for Student Affairs or his/her designee is present.
- (4) If the search reveals objects the possession of which violates a law or a University rule, the University may take appropriate disciplinary action even though the objects were not listed on the search authorization.

**1720-05-01-.13 Academic Dishonesty.** The University of Tennessee at Martin has chosen as its primary objective quality undergraduate education. Commitment to this objective must include an obligation by all members of the University community to promote and protect the highest standards of integrity in study, research, instruction and evaluation. Dishonesty or unethical behavior does not belong at an institution dedicated to the promotion of knowledge and learning. Integrity of the academic process requires fair and impartial evaluation by faculty and honest academic conduct by students. A student may be found to have violated this obligation if he/she:

- (1) Refers during an academic evaluation to materials, sources, or devices not authorized by the instructor;
- (2) Provides assistance during an academic evaluation or assignment to another person in a manner not authorized by the instructor;
- (3) Receives assistance during an academic evaluation or assignment from another person in a manner not authorized by the instructor;

- (4) Possesses, buys, sells, obtains, or uses a copy of any materials intended to be used as an instrument of academic evaluation in advance of its administration;
- (5) Acts as a substitute for another person in any academic evaluation or assignment;
- (6) Utilizes another person as a substitute for him/herself in any academic evaluation or assignment;
- (7) Practices any form of deceit in an academic evaluation or assignment;
- (8) Depends on the aid of others, in a manner expressly prohibited by the instructor, in the research, preparation, creation, writing, performing, or publication of work to be submitted for academic credit or evaluation;
- (9) Provides aid to another person, knowing such aid is expressly prohibited by the instructor, in the research, preparation, creation, writing, performing, or publication of work to be submitted for academic credit or evaluation;
- (10) Indulges in plagiarism by presenting as one's own, for academic evaluation or assignment, the ideas, representations, or works of another person or persons without customary and proper acknowledgment of sources;
- (11) Submits the work of another person in a manner that represents the work to be one's own;
- (12) Knowingly permits one's work to be submitted by another person without the instructor's authorization;
- (13) Attempts deceitfully to influence or change one's academic evaluation or record; or
- (14) Indulges in conduct that is so disruptive as to infringe upon the rights of an instructor or fellow students during a class or examination session.

\* 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)
John Compton	x				
Commissioner Charles Hatcher				x	
Decosta Jenkins	x				
Kara Lawson	x				
Amy E. Miles	x				
Kenneth Packer (non-voting trustee)					
William C. Rhodes III	x				
Donnie Smith	x				
Kim H. White	x				
Alan D. Wilson	x				
Jamie Woodson	x				

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the University of Tennessee Board of Trustees on 03/01/2019, 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: 7/25/19

Signature: 

Name of Officer: Matthew Scaggins

Title of Officer: General Counsel

Subscribed and sworn to before me on: July 25, 2019

Notary Public Signature: Jina M. Loflin

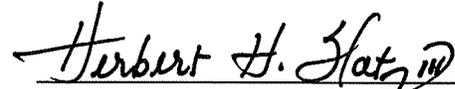
My commission expires on: 8-1-2022



Agency/Board/Commission: University of Tennessee (Martin)

Rule Chapter Number(s): 1720-05-01 Student Rights and Responsibilities

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  
9/28/2019  
\_\_\_\_\_  
Date

**Department of State Use Only**

Filed with the Department of State on: \_\_\_\_\_

9/30/19

Effective on: \_\_\_\_\_

12/29/19



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

2019 SEP 30 PM 12:29  
SECRETARIAL STATE  
SUBSTITUTIONS