G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Labor and Workforce Development
DIVISION:	Occupational Safety and Health
SUBJECT:	Occupational Safety and Health Standards for General Industry, Construction, and Agriculture.
STATUTORY AUTHORITY:	Under the statutory authority of 29 U.S.C. § 667, Tennessee has an approved state plan that provides for the development and enforcement of occupational safety and health standards. In accordance with the plan, when a federal occupational safety and health standard is promulgated under 29 U.S.C. § 655 Tennessee generally adopts the federal standard relating to the same issue. When a federal standard is not adopted, it is referenced as an exception in the rules. The statutory authority for promulgation of the rules by the Commissioner of Labor and Workforce Development is T.C.A. § 50-3-201.
EFFECTIVE DATES:	September 6, 2018 through June 30, 2019
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	Rules 0800-01-01-.06, 0800-01-06-.02, 0800-01-07-.01 and 0800-01-07-.02 are amended as part of these proposed rules in order to adopt and reference the latest occupational safety and health standards and exceptions, if any, in the applicable parts of Title 29, Code of Federal Regulations when published in the Federal Register. Since the last amendments to the rules there have been no substantive changes to the Occupational Safety and Health Standards.

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

An economic impact statement regarding the amendments in this rule proposal is not required under the provisions of the Regulatory Flexibility Act of 2007. As stated in Section 6 of Public Chapter 464, "This part shall not apply to rule**s** that are adopted on an emergency or pubic necessity basis under Title 4, Chapter 5, Part 2, that are federally mandated, or that substantially codify existing state or federal law." Under the statutory authority of 29 U.S.C. § 667, Tennessee has an approved state plan that provides for the development and enforcement of occupational safety and health standards. In accordance with the Tennessee Occupational Safety and Health State Plan, when a federal occupational safety and health standard is promulgated under 29 U.S.C. § 655 Tennessee generally adopts the federal standard relating to the same issue. The plan specifies that the state of Tennessee will adopt the federal standards or an equivalent state requirement within six (6) months of the standard's promulgation by federal OSHA. In addition, T.C.A. §50-3-201 authorizes the Commissioner of Labor and Workforce Development to adopt either state or federal occupational safety and health standards.

Impact on Local Governments

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

This rule does not have a projected impact on local governments.

Additional Information Required by Joint Government Operations Committee

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

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

Rules 0800-01-01-.06, 0800-01-06-.02, 0800-01-07-.01 and 0800-01-07-.02 are amended in order to adopt and reference the latest occupational safety and health standards and exceptions, if any, in the applicable parts of Title 29, Code of Federal Regulations when published in the Federal Register. Since the last amendments to the rules there have been no substantive changes to the Occupational Safety and Health Standards.

(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;

Under the statutory authority of 29 U.S.C. § 667, Tennessee has an approved state plan that provides for the development and enforcement of occupational safety and health standards. In accordance with the plan, when a federal occupational safety and health standard is promulgated under 29 U.S.C. § 655 Tennessee generally adopts the federal standard relating to the same issue. When a federal standard is not adopted, it is referenced as an exception in the rules. The statutory authority for promulgation of the rules by the Commissioner of Labor and Workforce Development is T.C.A. § 50-3-201.

(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;

All persons subject to T.C.A. §§ 50-3-101 et seq. are directly affected by the rules in Chapters 0800-01-01, 0800-01-06 and 0800-01-07. These rules provide for the effective administration and enforcement of the occupational safety and health standards required by the state plan. Employees and employers including governmental entities in the state must comply with the rules promulgated pursuant to federal and state law. It appears that there are no objections to the proposed amendments to the rules since no inquiries have been made.

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

There have been no Attorney General opinions or judicial rulings relevant to these rules.

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

There are no anticipated increases or decreases in state and local government revenues and expenditures resulting from promulgation of the proposed rules and amendments to the existing rules.

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

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

Larry Hunt, Manager, Standards & Procedures, Division of Occupational Safety and Health, is the agency representative most knowledgeable about these rules.

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

Tennessee Department of Labor and Workforce Development Division of Occupational Safety and Health 220 French Landing Drive Nashville, TN 37243-1002 (615) 741-7036 email: larry.hunt@tn.gov

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

Department of State
Division of Publications
312 Rosa L. Parks Avenue, 8th Floor Snodgrass/TN Tower
Nashville, TN 37243
Phone: 615-741-2650
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For Department of State Use Only

Sequence Number: 06-16-18
Rule ID(s): 6989-6991
File Date: 6/8/18
Effective Date: 9/6/18

Proposed Rule(s) Filing Form

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

Agency/Board/Commission:	Department of Labor and Workforce Development
Division:	Division of Occupational Safety and Health
Contact Person:	Larry Hunt
Address:	220 French Landing Drive
Zip:	37243-1002
Phone:	(615) 741-7036
Email:	Larry.Hunt@tn.gov

Revision Type (check all that apply):
X Amendment
___ New
___ Repeal

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

Chapter Number	**Chapter Title**
0800-01-01	Occupational Safety and Health Standards for General Industry
Rule Number	**Rule Title**
0800-01-01-.06	Adoption and Citation of Federal Standards

Chapter Number	**Chapter Title**
0800-01-06	Occupational Safety and Health Standards for Construction
Rule Number	**Rule Title**
0800-01-06-.02	Adoption and Citation of Federal Standards

Chapter Number	**Chapter Title**
0800-01-07	Occupational Safety and Health Standards for Agriculture
Rule Number	**Rule Title**
0800-01-07-.01	Adoption and Citation of Federal Standards
0800-01-07-.02	Exceptions to Adoption of Federal Standards

Proposed Amendments with Changes Red-Lined

Chapter 0800-01-01

Rule 0800-01-01-.06 Amended

Paragraph (2) of Rule 0800-01-01-.06 Adoption and Citation of Federal Standards is amended by changing the date from "January 1, 2018" to "July 1, 2018".

Existing Rule:

(2) The Commissioner of Labor and Workforce Development adopts the federal occupational safety and health standards codified in Title 29, Code of Federal Regulations, Part 1910, as of ~~January 1, 2018~~ except as provided in Rule 0800-01-01-.07 of this chapter.

Proposed Amended Rule:

(2) The Commissioner of Labor and Workforce Development adopts the federal occupational safety and health standards codified in Title 29, Code of Federal Regulations, Part 1910, as of July 1, 2018 except as provided in Rule 0800-01-01-.07 of this chapter.

Authority: T.C.A. §§ 4-3-1411 and 50-3-201.

Chapter 0800-01-06

Rule 0800-01-06-.02 Amended

Paragraph (2) of Rule 0800-01-06-.02 Adoption and Citation of Federal Standards is amended by changing the date from "January 1, 2018" to "July 1, 2018".

Existing Rule:

(2) The Commissioner of Labor and Workforce Development adopts the federal occupational safety and health standards codified in Title 29, Code of Federal Regulations, Part 1926, as of ~~January 1, 2018~~ except as provided in Rule 0800-01-06-.03 of this chapter.

Proposed Amended Rule:

(2) The Commissioner of Labor and Workforce Development adopts the federal occupational safety and health standards codified in Title 29, Code of Federal Regulations, Part 1926, as of July 1, 2018 except as provided in Rule 0800-01-06-.03 of this chapter.

Authority: T.C.A. §§ 4-3-1411, 50-3-103 and 50-3-201.

Chapter 0800-01-07

Rule 0800-01-07-.01 Amended

Paragraph (2) of Rule 0800-01-07-.01 Adoption and Citation of Federal Standards is amended by changing the date from "January 1, 2018" to "July 1, 2018".

Existing Rule:

(2) The Commissioner of Labor and Workforce Development adopts the federal occupational safety and health standards codified in Title 29, Code of Federal Regulations, Part 1928, as of ~~January 1, 2018~~ except as provided in Rule 0800-01-07-.02 of this chapter.

Proposed Amended Rule:

(2) The Commissioner of Labor and Workforce Development adopts the federal occupational safety and health standards codified in Title 29, Code of Federal Regulations, Part 1928, as of July 1, 2018 except as provided in Rule 0800-01-07-.02 of this chapter.

Authority: T.C.A. §§4-3-1411 and 50-3-201.

Rule 0800-01-07-.02 Amended

Paragraph (1) of Rule 0800-01-07-.02 Exceptions to Adoption of Federal Standards in 29 CFR Part 1928 is amended by changing the date from "January 1, 2018" to "July 1, 2018".

Existing Rule:

(1) As of ~~January 1, 2018~~, there are no exceptions.

Proposed Amended Rule:

(1) As of July 1, 2018, there are no exceptions.

Authority: T.C.A. §§4-3-1411 and 50-3-201.

* 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)

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the (*board/commission/other authority*) on 04/18/2018 (*date as mm/dd/yyyy*), and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State.

Date: 4/18/18

Signature: Burns P. Phillips

Name of Officer: Burns Phillips

Title of Officer: Commissioner of Labor and Workforce Development

DESIREE W FELTS STATE OF TENNESSEE NOTARY PUBLIC CHEATHAM COUNTY

Subscribed and sworn to before me on: April 18, 2018

Notary Public Signature: Desiree W Felts

My commission expires on: March 17, 2021

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

6/5/2018
Date

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Filed with the Department of State on: 6/8/18

Effective on: 9/6/18

Tre Hargett

Tre Hargett
Secretary of State

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Tennessee Wildlife Resources Agency
DIVISION:	Boating and Law Enforcement
SUBJECT:	Falconry
STATUTORY AUTHORITY:	Code of Federal Regulations 50- Migratory Bird Treaty Act (MBTA; 16 U.S.C. 703-712). This code allows for the states to issue the Peregrine Falcon take permits.
EFFECTIVE DATES:	September 3, 2018 through June 30, 2019
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	In September 2017, the federal register was amended to allow Tennessee five Peregrine Falcons take permits. This amendment to rules and regulations 1660-01-02-.03 Falconry will allow for a random computer draw in order for falconers to secure these permits.

Public Hearing Comments

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A § 4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.

PUBLIC COMMENTS AND RESPONSES

Comment: No written or verbal comments were received by the Commission.
Response: N/A

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, and/or directly benefit from the proposed rule;

Answer: The rule will have no negative impact on small business.

(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;

Answer: There will be no projected reporting, recordkeeping and other administrative costs required for compliance.

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

Answer: The rule will 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/or objectives of the proposed rule that may exist, and to what extent, such alternative means might be less burdensome to small business;

Answer: There are no less burdensome, less intrusive or less costly alternative methods of achieving the purpose and/or objectives of the proposed rule.

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

Answer: There is no other federal or state code comparison with CFR 50 – Migratory Bird Treaty Act (MBTA; 16U.S.C. 703-712). This code allows for the states to issue the Peregrine Falcon take permits.

(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.

Answer: N/A

Impact on Local Governments

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

Will passage of this rule have a projected financial impact on local governments?

Answer: The rule will have no projected financial impact on local governments.

Please describe the increase in expenditures or decrease in revenues:

Answer: There will be no increase or decrease in revenue.

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;

In September 2017, the federal register was amended to allow Tennessee five Peregrine Falcons take permits. This amendment to rules and regulations 1660-01-02-.03 Falconry will allow for a random computer draw in order for falconers to secure these permits.

(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;

Code of Federal Regulations 50 – Migratory Bird Treaty Act (MBTA; 16 U.S.C. 703-712). This code allows for the states to issue the Peregrine Falcon take permits.

(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;

Resident and non-resident permitted falconers

(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;

We do not anticipate any significant fiscal impact to the Agency, local or state revenues as a result of this rule amendment.

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

Chris Richardson, Special Assistant to the Director - Policy and Legislation

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

Chris Richardson, TWRA Special Assistant to the Director/Policy and Legislation, will explain the rule at the scheduled meeting of the Government Operations Committee.

(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

Chris Richardson, Tennessee Wildlife Resources Agency, P.O. Box 40747, Nashville, TN 37204, (615) 837-6016, Chris.Richardson@tn.gov

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

There is no addition relevant information to the rule proposed.

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Nashville, TN 37243
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Sequence Number: 06-03-18
Rule ID(s): 6910
File Date: 6/5/18
Effective Date: 9/3/18

Rulemaking Hearing Rule(s) Filing Form

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

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

Agency/Board/Commission:	Tennessee Wildlife Resources Agency
Division:	Boating and Law Enforcement
Contact Person:	Lisa Crawford
Address:	PO Box 40747, Nashville, TN
Zip:	37204
Phone:	615-781-6606
Email:	Lisa.Crawford@tn.gov

Revision Type (check all that apply):
X 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**
1660-01-02	Rules and Regulations for Birds
Rule Number	**Rule Title**
1660-01-02-.03	Falconry

Amendment

1660-01-02-.03, Falconry, is hereby amended by deleting the rule in its entirety and replacing it with the following:

1660-01-02-.03 FALCONRY.

(1) Definitions:

(a) "Raptor" - means a live migratory bird of the family Accipitriformes or the great horned owl (Bubo virginianiuis) of the family Strigidae.

(b) "Take" - means to trap or capture, or attempt to trap or capture a raptor for the purpose of falconry.

Amendment

1660-01-02-.03, Falconry, is hereby amended by deleting the rule in its entirety and replacing it with the following:

1660-01-02-.03 FALCONRY.

(1) Definitions:

(a) "Raptor" - means a live migratory bird of the family Accipitriformes or the great horned owl (Bubo virginianiuis) of the family Strigidae.

(b) "Take" - means to trap or capture, or attempt to trap or capture a raptor for the purpose of falconry.

(c) "Falconry" - means the sport of taking quarry by means of a trained raptor.

(d) "Service" - means the U.S. Fish and Wildlife Service, U.S. Department of Interior.

(e) "State" - means the Tennessee Wildlife Resources Agency.

(f) "Bred in captivity" or "captive-bred" - refers to raptors, including eggs, hatched in captivity from parents that mated or otherwise transferred gametes in captivity.

(g) "Captivity" - means a live raptor held in a controlled environment that is intensively manipulated by man for the purpose of producing raptors of selected species, and that has boundaries designated to prevent raptors, eggs or gametes of the selected species from entering or leaving the controlled environment. General characteristics of captivity may include, but are not limited to, artificial housing, waste removal, health care, and protection from predators, and artificially supplied foods.

(2) Examination - Before any Apprentice Falconry Permit is issued, the applicant shall be required to answer correctly at least 80 percent of the questions on a supervised examination approved by the Service relating to the basic biology, care, and handling of raptors, literature, laws, regulations, and other appropriate subject matter.

(3) Permit requirement - A valid state falconry permit from Tennessee or another state meeting federal falconry standards is required before any person may take, possess, or transport a raptor for falconry purposes. Falconers from other states must obtain a Tennessee permit within 60 days of Tennessee residency in order to continue the practice of falconry in Tennessee.

a. Peregrine falcons may only be taken under the authority of a permit obtained through a random computer drawing. Only permitted General Class or Master Class resident and non-resident falconers may participate in the drawing. Interested falconers must complete a no-fee Peregrine Falcon Take Permit Application found on TWRA's website, www.tnwildlife.org or http://www.tn.gov/twra/. Such application must be completed and postmarked no later than midnight on August 15th each year. If August 15th falls on Sunday the deadline will be midnight on August 16th. All applications should be sent to TWRA, Falconry Coordinator, P.O. Box 40747, Nashville, TN 37204.

b. All applications will be entered in a random draw to select the permit(s) available for peregrine falcon take in Tennessee. Permit drawings will be held during the last week of August each year, with actual dates posted on the Agency's website. Permittees will be notified by phone and mail.

c. Peregrine falcons may be trapped from September 20th through October 20th each year. All birds taken must be first-year (juvenile) and as passage birds. Any banded bird captured must be immediately released at the site of capture and the band number and location of trapping site reported to the TWRA Falconry

Coordinator. Permit holders who trap a peregrine falcon wearing a transmitter should contact the TWRA Falconry Coordinator immediately at 615-781-6581 for authorization and assistance.

(4) An applicant who wishes to practice falconry must submit an application, with appropriate permit fee, for a State Falconry Permit to the Executive Director of the Agency.

(5) Permit conditions - Every permit issued shall be subject to the following:

(a) A permittee may not take, transport, or possess a bald eagle for falconry purposes.

(b) A permittee may trade or transfer a raptor to another permittee if no money or other consideration is involved, except as authorized under state and federal propagation permits. A permittee may trade or transfer a raptor to another permittee in an interstate transaction if prior written approval of the state which issued the permit is obtained, stating that federal and their state legal requirements are being met.

(c) A permittee may not take, possess, or transport a raptor in violation of restrictions, conditions, and requirements of the Federal or State Falconry Permit Regulations.

(d) Any change in ownership including, but not limited to, take from the wild, transfer, death, and or escape, shall be reported to the Service electronically at http://permits.fws.gov/186A within five (5) working days. A copy of such will be provided to the State within the same amount of time.

(6) Permits will expire on June 30 of the third year from date of issuance.

(7) Classes of permits - Three classes of falconry permits shall be issued, including:

(a) Apprentice class - Conditions of this class include:

1. An apprentice permittee shall be at least fourteen (14) years old;

2. A sponsor who is a holder of a General or Master Falconry Permit is required for the first two years in which an apprentice permit is held, regardless of the age of the permittee. A sponsor may not have more than three (3) apprentices at one time;

3. An apprentice permittee shall not possess more than one raptor and may not obtain more than one raptor as a replacement bird during any twelve-month period; and

4. An apprentice permittee may only possess a wild American Kestrel (Falco sparverius) or a Red-tailed Hawk (Buteo jamaicensis) captured by the apprentice, or a captive-bred raptor from a legal source.

(b) General Class - Conditions of this class include:

1. A general permittee shall be at least eighteen (18) years old;

2. A general permittee shall have at least two years' experience in the practice of falconry at the apprentice level or its equivalent;

3. A general permittee may not possess more than three raptors and may not obtain more than two raptors from the wild as replacement birds during any twelve-month period; and;

4. A general permittee may not take, transport, or possess any species listed as Threatened or Endangered by the Service, except as provided by the State and Federal Falconry Regulations.

(c) Master Class - Conditions of this class include:

1. An applicant must have at least five years' experience in the practice of falconry at the General class level or its equivalent;

2. A master permittee may not possess more than five raptors, and may not obtain more than two raptors taken from the wild for replacement birds during any twelve-month period;

3. A master permittee may not take, transport or possess any species listed as Endangered by the Service except as provided by the State and Federal Falconry Regulations.

4. Except as provided by the State and Federal Falconry Regulations, a master permittee may not take, transport, or possess as part of his five-bird limitation, more than one raptor listed as Threatened by the Service and/or State, or listed as In Need of Management by the State, and then only in accordance with Federal Regulations, 50 CFR 17, 21, and 22, and/or current State Proclamation "Proclaiming the Taking of Raptors for the Purpose of Falconry."

(8) Facilities and equipment - Before any falconry permit is issued, the applicant's raptor housing facilities and falconry equipment shall be inspected and certified by a representative of the Tennessee Wildlife Resources Agency as meeting the following standards:

(a) Facilities - The primary consideration for raptor housing facilities whether indoors (mews) or outdoors (weathering area) is protection from the environment, predators, or undue disturbance. Applicants shall have the following facilities, except that depending upon climate conditions and sensitivity of the species, only one of the following facilities may be required.

1. Indoor facilities (mews) shall be large enough to allow easy access for caring for raptors housed in the facility. If more than one raptor is to be housed in the facility, the raptors shall be tethered or separated by partitions and the area for each bird shall be large enough to allow each bird to fully extend its wings. There shall be at least one window, protected on the inside by vertical bars, spaced narrower than the width of the bird's body and a secure door that can be easily closed. The floor of the mews shall permit easy cleaning and shall be well drained. Adequate perches shall be provided.

2. Outdoor facilities (weathering area) shall be fenced and covered with netting or wire or roofed to protect the birds from disturbances and attack by predators, except that perches more than 62 ~~feet~~ inches high need not be covered or roofed. The enclosures shall be wide enough to insure that the birds' wings shall not strike the fence when flying from the perch. Protection from excessive sun, wind, and inclement weather shall be provided for each bird. Adequate perches shall be provided.

(b) Equipment – An applicant must possess the following before obtaining a permit:

1. Jesses - At least one pair of Aylmeri jesses of pliable leather or suitable synthetic material to be used when any raptor is flown free. Traditional type one-piece jesses may be used on raptors when not being flown;

2. Leashes and swivels - At least one flexible, weather resistant leash and one strong swivel of acceptable falconry design;

3. Bath container - At least one container, 2 to 6 inches deep and wider than the length of the raptor, for drinking and bathing for each raptor;

4. Outdoor perches - At least one weathering area perch of an acceptable design shall be provided for each raptor; and,

5. Weighing device - A reliable scale or balance suitable for weighing the raptor(s) and graduated in increments of not more than 2 ounces (15 grams) shall be provided.

(c) Maintenance - All facilities and equipment shall be kept at or above the preceding standards at all times.

(d) Transportation - A raptor may be transported or held in temporary facilities, which shall be provided with an adequate perch and protection from extreme temperatures and excessive disturbance, for a period not to exceed thirty (30) days.

(9) Marking - All raptors held within this state, except those held for scientific, rehabilitation, or zoological purposes, shall have a numbered, seamless, non-reusable marker supplied by the Service and available via the State. In the instance of raptors acquired after the effective date of these regulations, markers shall be attached immediately upon acquisition. Alteration, counterfeiting, or defacing of a marker is prohibited, except that permittees may remove the rear tab on markers and may smooth any imperfect surface, provided that the marker and the number are not affected. Loss or removal of any band must be reported to both the Service and the State within five (5) business days of the loss. The band must be replaced within thirty (30) days by a like band issued by the Service and available through the State.

(10) Taking restriction - Raptors may be taken only in accordance with the appropriate proclamations promulgated by the Tennessee Wildlife Resources Commission.

(11) Other restrictions:

(a) Any person who possesses a lawfully acquired raptor before the effective date of these regulations and who fails to meet the permit requirements shall be allowed to retain the raptors. All such birds shall be identified with markers supplied by the Service and cannot be replaced if death, loss, release, or escape occurs.

(b) Any person who possesses raptors before the effective date of these regulations in excess of the number allowed under his class permit shall be allowed to retain the extra raptors. All such raptors shall be identified with markers supplied by the Service, and no additional raptors can be obtained, until the number in possession is at least one less than the total number authorized by the class of permit held by the permittee.

(c) A falconry permit holder shall obtain written permission from the State before any species not indigenous to this state is intentionally released to the wild. The marker of any intentionally released bird shall be removed and surrendered to the Tennessee Wildlife Resources Agency upon release. A standard Federal bird band shall be attached to such birds by the state or authorized Federal bird bander whenever possible.

(d) A raptor possessed under authority of a falconry permit may be temporarily held by a person other than the permittee for maintenance and care for a period not to exceed thirty (30) days. The raptor must be accompanied at all times by a properly completed form provided by the State/Service designating the person caring for the raptor as the possessor of record and by a signed, dated statement from the permittee authorizing the temporary possession.

(e) Feathers that are molted or those feathers from birds held in captivity that die, may be retained and exchanged by permittees only for imping.

(12) Interstate transport - Non-transfer, interstate import and export conditions follow:

(a) Non-residents of this state who are permit holders from states which are recognized as falconry states by the Service may transport into this state raptors for personal falconry use (e.g. meets) provided the laws and regulations concerning hunting and falconry are observed, including the purchase of an appropriate Tennessee non-resident hunting license prior to pursuit of wild prey by falconry in Tennessee.

(b) Residents of this state who are falconry permittees may transport their raptors into other states that are recognized by the Service as falconry states for personal falconry use, provided all applicable hunting and falconry laws and regulations are observed.

Authority: T.C.A. §§ 70-1-206 and 70-4-414. Administrative History: Original rule filed June 25, 1975; effective July 25, 1975. Amendment filed March 2, 1978; effective April 1, 1978. Repeal and new rule filed August 26, 1998; effective November 9, 1998. Repeal and new rule filed May 25, 2011; effective August 23, 2011.

* 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)
Chad Baker	X				
Angela Box	X				
Jeff Cook	X				
Bill Cox	X				
Dennis Gardner	X				
Kurt Holbert	X				
Connie King	X				
Brian McLerran	X				
Tony Sanders	X				
James Stroud	X				
Bill Swan	X				
Kent Woods	X				
Jamie Woodson	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Fish & Wildlife Commission on 02/28/2018 (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: *12/22/2017*

Rulemaking Hearing(s) Conducted on: (add more dates). *02/28/2018*

Date: 3/1/18

Signature: Ed Carter

Name of Officer: Ed Carter

Title of Officer: Executive Director

Subscribed and sworn to before me on: March 2018

Notary Public Signature: Sheryl D. Holtam

My commission expires on: 3-8-2021

SHERYL D HOLTAM
STATE OF TENNESSEE
NOTARY PUBLIC
Davidson County

All rulemaking hearing rules provided for herein (Tennessee Wildlife Resources Agency, Rule 1660-01-02-.03, Falconry) 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

5/23/2018
Date

Department of State Use Only

Filed with the Department of State on: 6/5/18

Effective on: 9/3/18

Tre Hargett
Secretary of State

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PUBLICATIONS

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Commerce and Insurance
DIVISION:	Insurance
SUBJECT:	Annual Financial Reporting
STATUTORY AUTHORITY:	None
EFFECTIVE DATES:	September 26, 2018 through June 30, 2019
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	These rules adopt the current National Association of Insurance Commissioners (NAIC) model regulation on annual financial reporting. These standards define "internal audit function"; require the insurer's audit committee to oversee the internal audit functions; and establish internal audit requirements for large, multistate insurers.

Public Hearing Comments

No public comments, oral or written, were received regarding these rules.

Regulatory Flexibility Addendum

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

The Department of Commerce and Insurance has considered whether the proposed rules in these Rulemaking Hearing Rules are such that they will have an economic impact on small businesses (businesses with fifty (50) or fewer employees). These rules will only affect insurers and insurance companies licensed in Tennessee with annual direct written and unaffiliated assumed premium of $500,000,000 or more and those that are members of a group of insurers with annual direct written and unaffiliated assumed premium of $1,000,000,000 or more. These insurers would typically not fall within the definition of a small business.

Pursuant to T.C.A. § 4-5-402, the following methods were considered when adopting these rules:

(1) The extent to which the rule may overlap, duplicate, or conflict with other federal, state, and local government rules;

These rules do not overlap, duplicate, or conflict with other laws or regulations. Insurance companies are primarily regulated on the state and not the federal level. The Department of Commerce and Insurance is the agency responsible for regulating insurance companies in this state.

(2) Clarity, conciseness, and lack of ambiguity in the rule;

These rules were drafted to be as clear and concise as practicable given the context of internal audit requirements.

(3) The establishment of flexible compliance and reporting requirements for small businesses;

The compliance and reporting requirements imposed by these rules fall upon large, multistate insurers and will not be a burden to small businesses in Tennessee.

(4) The establishment of friendly schedules or deadlines for compliance and reporting requirements for small businesses;

The compliance and reporting requirements imposed by these rules fall upon large, multistate insurers and will not be a burden to small businesses in Tennessee.

(5) The consolidation or simplification of compliance or reporting requirements for small businesses;

The compliance and reporting requirements imposed by these rules fall upon large, multistate insurers and will not be a burden to small businesses in Tennessee.

(6) The establishment of performance standards for small business as opposed to design or operational standards required in the proposed rule; and

These rules do not impose any performance, design or operational standards on small businesses in Tennessee.

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

These rules adopt the current National Association of Insurance Commissioners (NAIC) model regulation on annual financial reporting. These standards define "internal audit function"; require the audit committee to oversee the internal audit functions; and establish internal audit requirements for large, multistate insurers.

Impact on Local Governments

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

This rule will not have an impact on local governments.

Additional Information Required by Joint Government Operations Committee

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

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

These rules adopt the current National Association of Insurance Commissioners (NAIC) model regulation on annual financial reporting. These standards define "internal audit function"; require the insurer's audit committee to oversee the internal audit functions; and establish internal audit requirements for large, multistate insurers.

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

There are no federal regulations mandating promulgation of this rule. These rules adopt NAIC Model Regulation 205 on Annual Financial Reporting. Adoption of these rules ensure that Tennessee remains in full compliance with NAIC accreditation standards.

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

The insurance industry is expected to urge adoption of this rule.

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

None known.

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

None.

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

Michael Humphreys, Assistant Commissioner for Insurance; Rachel Jrade-Rice, Director of Insurance; Brian Hoffmeister, Director of Policy Analysis; Patrick Merkel, Assistant General Counsel for Insurance.

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

Patrick Merkel, Assistant General Counsel for Insurance

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

Davy Crockett Tower, 8th Floor, 500 James Robertson Parkway, Nashville, Tennessee 37243; 615-532-6830; patrick.merkel@tn.gov

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

None.

Department of State
Division of Publications
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Nashville, TN 37243
Phone: 615-741-2650
Email: publications.information@tn.gov

For Department of State Use Only

Sequence Number: 06-28-18
Rule ID(s): 7102
File Date: 6/28/18
Effective Date: 9/26/18

Rulemaking Hearing Rule(s) Filing Form

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

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

Agency/Board/Commission:	Department of Commerce and Insurance
Division:	Insurance
Contact Person:	Patrick Merkel, Assistant General Counsel for Insurance
Address:	Davy Crockett Tower, 8th Floor 500 James Robertson Parkway Nashville, Tennessee
Zip:	37243
Phone:	615-532-6830
Email:	patrick.merkel@tn.gov

Revision Type (check all that apply):

X Amendment
X New
___ Repeal

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

Chapter Number	**Chapter Title**
0780-01-65	Annual Financial Reporting
Rule Number	**Rule Title**
0780-01-65-.04	Definitions
0780-01-65-.05	General Requirements Related to Filing and Extensions for Filing Annual Audited Financial Report and Audit Committee Appointment
0780-01-65-.15	Requirements for Audit Committees
0780-01-65-.16	Internal Audit Function Requirements
0780-01-65-.19	Exemptions and Effective Dates

Amendments

CHAPTER 0780-01-65
ANNUAL FINANCIAL REPORTING

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0780-01-65-.01 AUTHORITY.

This Chapter is promulgated by the commissioner of commerce and insurance pursuant to T.C.A. §§ 56-1-501(h) and 56-2-301.

Authority: T.C.A. §§ 56-1-501(h), 56-2-301, 56-1-408, 56-1-409, 56-1-410, 56-1-411.

0780-01-65-.02 PURPOSE.

The purpose of this Chapter is to improve the commissioner's surveillance of the financial condition of insurers by requiring (1) an annual audit of financial statements reporting the financial position and the results of operations of insurers by independent certified public accountants; (2) Communication of Internal Control Related Matters Noted in an Audit, and (3) Management's Report of Internal Control over Financial Reporting.

Authority: T.C.A. §§ 56-1-501(h) and 56-2-301.

0780-01-65-.03 SCOPE.

(1) Every insurer as defined in Rule 0780-01-65-.04 shall be subject to this Chapter. Insurers having direct premiums written in this state of less than $1,000,000 in any calendar year and less than 1,000 policyholders or certificate holders of direct written policies nationwide at the end of the calendar year shall be exempt from this Chapter for the year (unless the commissioner makes a specific finding that compliance is necessary for the commissioner to carry out statutory responsibilities) except that insurers having assumed premiums pursuant to contracts and/or treaties of reinsurance of $1,000,000 or more will not be so exempt.

(2) Foreign or alien insurers filing the audited financial report in another state, pursuant to that state's requirement for filing of audited financial reports, which has been found by the commissioner to be substantially similar to the requirements herein, are exempt from Rules 0780-01-65-.05 through .14 if:

(a) A copy of the audited financial report, Communication of Internal Control Related Matters Noted in an Audit, and the Accountant's Letter of Qualifications that are filed with the other state are filed with the commissioner in accordance with the filing dates specified in Rules 0780-01-65-.05, .12 and .13, respectively (Canadian insurers may submit accountants' reports as filed with the Office of the Superintendent of Financial Institutions, Canada).

(b) A copy of any Notification of Adverse Financial Condition Report filed with the other state is filed with the commissioner within the time specified in Rule 0780-01-65-.11.

(3) Foreign or alien insurers required to file Management's Report of Internal Control over Financial Reporting in another state are exempt from filing the Report in this state provided the other state has substantially similar reporting requirements and the Report is filed with the commissioner of the other state within the time specified.

(4) This Chapter shall not prohibit, preclude or in any way limit the commissioner from ordering or conducting or performing examinations of insurers allowed by law.

Authority: T.C.A. §§ 56-1-501(h) and 56-2-301.

0780-01-65-.04 DEFINITIONS.

(1) "Accountant" or "independent certified public accountant" means an independent certified public accountant or accounting firm in good standing with the American Institute of Certified Public Accountants (AICPA) and in all states in which he or she is licensed to practice; for Canadian and British companies, it means a Canadian-chartered or British-chartered accountant.

(2) An "affiliate" of, or person "affiliated" with, a specific person, is a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

(3) "Audit committee" means a committee (or equivalent body) established by the board of directors of an entity for the purpose of overseeing the accounting and financial reporting processes of an insurer or group of insurers, and audits of financial statements of the insurer or group of insurers. The audit committee of any entity that controls a group of insurers may be deemed to be the audit committee for one or more of these controlled insurers solely for the purposes of this Chapter at the election of the controlling person. Refer to Rule 0780-01-65-.15(~~6~~7) for exercising this election. If an audit committee is not designated by the insurer, the insurer's entire board of directors shall constitute the audit committee.

(4) "Audited financial report" means and includes those items specified in Rule 0780-01-65-.06.

(5) "Commissioner" means the commissioner of commerce and insurance.

(6) "Department" means the department of commerce and insurance.

(7) "Group of insurers" means those licensed insurers included in the reporting requirements of Title 56, Chapter 11 of the Tennessee Code Annotated, or a set of insurers as identified by management, for the purpose of assessing the effectiveness of Internal control over financial reporting.

(8) "Indemnification" means an agreement of indemnity or a release from liability where the intent or effect is to shift or limit in any manner the potential liability of the person or firm for failure to adhere to applicable auditing or professional standards, whether or not resulting in part from knowing of other misrepresentations made by the insurer or its representatives.

(9) "Independent board member" has the same meaning as described in Rule 0780-01-65-.15(~~4~~5).

(10) "Insurer" means an insurer or insurance company as defined in Tenn. Code Ann. § 56-1-102 and authorized to do business in Tennessee under a license or a certificate of authority from the commissioner as referenced in Title 56 Chapter 2 or Chapter 25 of the Tennessee Code Annotated.

(11) "Internal audit function" means a person or persons that provide independent, objective and reasonable assurance designed to add value and improve an organization's operations and accomplish its objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, control and governance processes.

(12) ~~(11)~~ "Internal control over financial reporting" means a process effected by an

entity's board of directors, management and other personnel designed to provide reasonable assurance regarding the reliability of the financial statements, i.e., those items specified in Rule 0780-01-65-.06(2)(b)-(g) and includes those policies and procedures that:

(a) Pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of assets;

(b) Provide reasonable assurance that transactions are recorded as necessary to permit preparation of the financial statements, i.e., those items specified in Rule 0780-01-65-.06(2)(b)-(g) and that receipts and expenditures are being made only in accordance with authorizations of management and directors; and

(c) Provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of assets that could have a material effect on the financial statements, i.e., those items specified in Rule 0780-01-65-.06(2)(b)-(g).

(13) ~~(12)~~ "NAIC" means the National Association of Insurance Commissioners.

(14) ~~(13)~~ "SEC" means the United States Securities and Exchange Commission.

(15) ~~(14)~~ "Section 404" means Section 404 of the Sarbanes-Oxley Act of 2002 and the SEC's rules and regulations promulgated thereunder.

(16) ~~(15)~~ "Section 404 Report" means management's report on "internal control over financial reporting" as defined by the SEC and the related attestation report of the independent certified public accountant as described in Paragraph (1) of this Rule.

(17) ~~(16)~~ "SOX Compliant Entity" means an entity that either is required to be compliant with, or voluntarily is compliant with, all of the following provisions of the Sarbanes-Oxley Act of 2002: (i) the preapproval requirements of Section 201 (Section 10A(i) of the Securities Exchange Act of 1934); (ii) the audit committee independence requirements of Section 301 (Section 10A(m)(3) of the Securities Exchange Act of 1934); and (iii) the internal control over financial reporting requirements of Section 404 (Item 308 of SEC Regulation S-K).

Authority: T.C.A. §§ 56-1-102, 56-1-501(h), 56-2-301, 56-25-1602; 56-2-201 et seq.,56-11-101 et seq,; Sarbanes-Oxley Act of 2002, Sections 201, ~~301~~302,and 404.

0780-01-65-.05 GENERAL REQUIREMENTS RELATED TO FILING AND EXTENSIONS FOR FILING OF ANNUAL AUDITED FINANCIAL REPORTS AND AUDIT COMMITTEE APPOINTMENT.

(1) All insurers shall have an annual audit by an independent certified public accountant and shall file an audited financial report with the commissioner on or before June 1 for the year ended December 31 immediately preceding. The commissioner may require an insurer to file an audited financial report earlier than June 1 with ninety (90) days advance notice to the insurer.

(2) Extensions of the June 1 filing date may be granted by the commissioner for thirty-day periods upon a showing by the insurer and its independent certified public accountant of the reasons for requesting an extension and determination by the commissioner of good cause for an extension. The request for extension must be submitted in writing not less than ten (10) days prior to the due date in sufficient

detail to permit the commissioner to make an informed decision with respect to the requested extension.

(3) If an extension is granted in accordance with the provisions in Paragraph (2) of this Rule, a similar extension of thirty (30) days is granted to the filing of Management's Report of Internal Control over Financial Reporting described in Rule 0780-01-65-.~~17~~18.

(4) Every insurer required to file an annual audited financial report pursuant to this Chapter shall designate a group of individuals as constituting its audit committee, as defined in Rule 0780-01-65-.04. The audit committee of an entity that controls an insurer may be deemed to be the insurer's audit committee for purposes of this Chapter at the election of the controlling person.

Authority: T.C.A. §§ 56-1-501(h) and 56-2-301.

0780-01-65-.06 CONTENTS OF ANNUAL AUDITED FINANCIAL REPORT.

(1) The annual audited financial report shall report the financial position of the insurer as of the end of the most recent calendar year and the results of its operations, cash flows and changes in capital and surplus for the year then ended in conformity with statutory accounting practices prescribed, or otherwise permitted, by the department of insurance of the state of domicile.

(2) The annual audited financial report shall include the following:

(a) Report of independent certified public accountant;

(b) Balance sheet reporting admitted assets, liabilities, capital and surplus;

(c) Statement of operations;

(d) Statement of cash flow;

(e) Statement of changes in capital and surplus;

(f) Notes to financial statements. These notes shall be those required by the appropriate NAIC Annual Statement Instructions and the NAIC Accounting Practices and Procedures Manual. The notes shall include a reconciliation of differences, if any, between the audited statutory financial statements and the corresponding annual statement filed pursuant to Title 56, Chapter 1, Part 5 of the Tennessee Code Annotated or other applicable insurance statutory requirement with a written description of the nature of these differences; and

(g) The financial statements included in the audited financial report shall be prepared in a form and using language and groupings substantially the same as the relevant sections of the annual statement of the insurer filed with the commissioner, and the financial statement shall be comparative, presenting the amounts as of December 31 of the current year and the amounts as of the immediately preceding December 31. (However, in the first year in which an insurer is required to file an audited financial report, the comparative data may be omitted).

Authority: T.C.A. §§ 56-1-501, 56-1-501(a)-(h), 56-2-301, 56-44-102.

0780-01-65-.07 DESIGNATION OF INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT.

(1) Each insurer required by this Chapter to file an annual audited financial report must within sixty (60) days after becoming subject to the requirement, register with the commissioner in writing the name and address of the independent certified public accountant or accounting firm retained to conduct the annual audit set forth in this Chapter. Insurers not retaining an independent certified public accountant on the effective date of this Chapter shall register the name and address of their retained independent certified public accountant not less than six (6) months before the date when the first audited financial report is to be filed.

(2) The insurer shall obtain a letter from the accountant, and file a copy with the commissioner stating that the accountant is aware of the provisions of the insurance code and the regulations of the insurance department of the state of domicile that relate to accounting and financial matters and affirming that the accountant will express his or her opinion on the financial statements in terms of their conformity to the statutory accounting practices prescribed or otherwise permitted by that insurance department, specifying such exceptions as he or she may believe appropriate.

(3) If an accountant who was the accountant for the immediately preceding filed audited financial report is dismissed or resigns, the insurer shall within five (5) business days notify the commissioner of this event. The insurer shall also furnish the commissioner with a separate letter within ten (10) business days of the above notification stating whether in the twenty-four (24) months preceding such event there were any disagreements with the former accountant on any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure; which disagreements, if not resolved to the satisfaction of the former accountant, would have caused him or her to make reference to the subject matter of the disagreement in connection with his or her opinion. The disagreements required to be reported in response to this Rule include both those resolved to the former accountant's satisfaction and those not resolved to the former accountant's satisfaction. Disagreements contemplated by this Rule are those that occur at the decision-making level, i.e., between personnel of the insurer responsible for presentation of its financial statements and personnel of the accounting firm responsible for rendering its report. The insurer shall also in writing request the former accountant to furnish a letter addressed to the insurer stating whether the accountant agrees with the statements contained in the insurer's letter and, if not, stating the reasons for which he or she does not agree; and the insurer shall furnish the responsive letter from the former accountant to the commissioner together with its own.

Authority: T.C.A. §§ 56-1-501(h) and 56-2-301.

0780-01-65-.08 QUALIFICATIONS OF INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT.

(1) The commissioner shall not recognize a person or firm as a qualified independent certified public accountant if the person or firm:

(a) Is not in good standing with the AICPA and in all states in which the accountant is licensed to practice, or, for a Canadian or British company, that is not a chartered accountant; or

(b) Has either directly or indirectly entered into an agreement of indemnity or release from liability (collectively referred to as "indemnification") with respect

to the audit of the insurer.

(2) Except as otherwise provided in this Chapter, the commissioner shall recognize an independent certified public accountant as qualified as long as he or she conforms to the standards of his or her profession, as contained in the Code of Professional Ethics of the AICPA and Rules and Regulations and Code of Ethics and Rules of Professional Conduct of the Tennessee Board of Public Accountancy, or similar code.

(3) A qualified independent certified public accountant may enter into an agreement with an insurer to have disputes relating to an audit resolved by mediation or arbitration. However, in the event of a delinquency proceeding commenced against the insurer under Title 56, Chapter 9 of the Tennessee Code Annotated, the mediation or arbitration provisions shall operate at the option of the statutory successor, to the extent allowed by law.

(4) (a) The lead (or coordinating) audit partner (having primary responsibility for the audit) may not act in that capacity for more than five (5) consecutive years. The person shall be disqualified from acting in that or a similar capacity for the same company or its insurance subsidiaries or affiliates for a period of five (5) consecutive years. An insurer may make application to the commissioner for relief from the above rotation requirement on the basis of unusual circumstances. This application should be made at least thirty (30) days before the end of the calendar year. The commissioner may consider the following factors in determining if the relief should be granted:

1. Number of partners, expertise of the partners or the number of insurance clients in the currently registered firm;

2. Premium volume of the insurer; or

3. Number of jurisdictions in which the insurer transacts business.

(b) The insurer shall file, with its annual statement filing, the approval for relief from Subparagraph (a) of this Paragraph with the states that it is licensed in or doing business in and with the NAIC. If the nondomestic state accepts electronic filing with the NAIC, the insurer shall file the approval in an electronic format acceptable to the NAIC.

(5) The commissioner shall neither recognize as a qualified independent certified public accountant, nor accept an annual audited financial report, prepared in whole or in part by a natural person who:

(a) Has been convicted of fraud, bribery, a violation of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. Sections 1961 to 1968, or any dishonest conduct or practices under federal or state law;

(b) Has been found to have violated the insurance laws of this state with respect to any previous reports submitted under this Chapter; or

(c) Has demonstrated a pattern or practice of failing to detect or disclose material information in previous reports filed under the provisions of this Chapter, Rule 0780-01-54-.09, Rule 0780-01-78-.04, or Rule 0780-01-83-.08.

(6) The commissioner may hold a hearing in accordance with the procedures set out in Title 4, Chapter 5, Part 3 of the Tennessee Code Annotated to determine whether

an independent certified public accountant is qualified and, considering the evidence presented, may rule that the accountant is not qualified for purposes of expressing his or her opinion on the financial statements in the annual audited financial report made pursuant to this Chapter and require the insurer to replace the accountant with another whose relationship with the insurer is qualified within the meaning of this Chapter.

(7) (a) The commissioner shall not recognize as a qualified independent certified public accountant, nor accept an annual audited financial report, prepared in whole or in part by an accountant who provides to an insurer, contemporaneously with the audit, the following non-audit services:

1. Bookkeeping or other services related to the accounting records or financial statements of the insurer;

2. Financial information systems design and implementation;

3. Appraisal or valuation services, fairness opinions, or contribution-in-kind reports;

4. Actuarially-oriented advisory services involving the determination of amounts recorded in the financial statements. The accountant may assist an insurer in understanding the methods, assumptions and inputs used in the determination of amounts recorded in the financial statement only if it is reasonable to conclude that the services provided will not be subject to audit procedures during an audit of the insurer's financial statements. An accountant's actuary may also issue an actuarial opinion or certification ("opinion") on an insurer's reserves if the following conditions have been met:

   (i) Neither the accountant nor the accountant's actuary has performed any management functions or made any management decisions;

   (ii) The insurer has competent personnel (or engages a third party actuary) to estimate the reserves for which management takes responsibility; and

   (iii) The accountant's actuary tests the reasonableness of the reserves after the insurer's management has determined the amount of the reserves;

5. Internal audit outsourcing services;

6. Management functions or human resources;

7. Broker or dealer, investment adviser, or investment banking services;

8. Legal services or expert services unrelated to the audit; or

9. Any other services that the commissioner determines, by regulation, are impermissible.

(b) In general, the principles of independence with respect to services provided by the qualified independent certified public accountant are largely predicated on three basic principles, violations of which would impair the accountant's

independence. The principles are that the accountant cannot function in the role of management, cannot audit his or her own work, and cannot serve in an advocacy role for the insurer.

(8) Insurers having direct written and assumed premiums of less than one hundred million dollars ($100,000,000) in any calendar year may request an exemption from Paragraph (7)(a) of this Rule. The insurer shall file with the commissioner a written statement discussing the reasons why the insurer should be exempt from these provisions. If the commissioner finds, upon review of this statement, that compliance with this Chapter would constitute a financial or organizational hardship upon the insurer, an exemption may be granted.

(9) A qualified independent certified public accountant who performs the audit may engage in other non-audit services, including tax services, that are not described in Paragraph (7)(a) of this Rule or that do not conflict with Paragraph (7)(b) of this Rule, only if the activity is approved in advance by the audit committee, in accordance with Paragraph (10) of this Rule.

(10) All auditing services and non-audit services provided to an insurer by the qualified independent certified public accountant of the insurer shall be preapproved by the audit committee. The preapproval requirement is waived with respect to non-audit services if the insurer is a SOX Compliant Entity or a direct or indirect wholly-owned subsidiary of a SOX Compliant Entity or:

(a) The aggregate amount of all such non-audit services provided to the insurer constitutes not more than five percent (5%) of the total amount of fees paid by the insurer to its qualified independent certified public accountant during the fiscal year in which the non-audit services are provided;

(b) The services were not recognized by the insurer at the time of the engagement to be non-audit services; and

(c) The services are promptly brought to the attention of the audit committee and approved prior to the completion of the audit by the audit committee or by one or more members of the audit committee who are the members of the board of directors to whom authority to grant such approvals has been delegated by the audit committee.

(11) The audit committee may delegate to one or more designated members of the audit committee the authority to grant the preapprovals required by Paragraph (10) of this Rule. The decisions of any member to whom this authority is delegated shall be presented to the full audit committee at each of its scheduled meetings.

(12) (a) The commissioner shall not recognize an independent certified public accountant as qualified for a particular insurer if a member of the board, president, chief executive officer, controller, chief financial officer, chief accounting officer, or any person serving in an equivalent position for that insurer, was employed by the independent certified public accountant and participated in the audit of that insurer during the one-year period preceding the date that the most current statutory opinion is due. This Rule shall only apply to partners and senior managers involved in the audit. An insurer may make application to the commissioner for relief from the above requirement on the basis of unusual circumstances.

(b) The insurer shall file, with its annual statement filing, the approval for relief from Subparagraph (a) of this Paragraph with the states that it is licensed in or

doing business in and the NAIC. If the nondomestic state accepts electronic filing with the NAIC, the insurer shall file the approval in an electronic format acceptable to the NAIC.

Authority: T.C.A. §§ 4-5-301, 56-1-501(b), 56-1-501 (h), 56-2-301 and 56-44-102.

0780-01-65-.09 CONSOLIDATED OR COMBINED AUDITS.

An insurer may make written application to the commissioner for approval to file audited consolidated or combined financial statements in lieu of separate annual audited financial statements if the insurer is part of a group of insurance companies that utilizes a pooling or one hundred percent (100%) reinsurance agreement that affects the solvency and integrity of the insurer's reserves and the insurer cedes all of its direct and assumed business to the pool. In these cases, a columnar consolidating or combining worksheet shall be filed with the report, as follows:

(1) Amounts shown on the consolidated or combined audited financial report shall be shown on the worksheet;

(2) Amounts for each insurer subject to this Rule shall be stated separately;

(3) Noninsurance operations may be shown on the worksheet on a combined or individual basis;

(4) Explanations of consolidating and eliminating entries shall be included; and

(5) A reconciliation shall be included of any differences between the amounts shown in the individual insurer columns of the worksheet and comparable amounts shown on the annual statements of the insurers.

Authority: T.C.A. §§ 56-1-501(h) and 56-2-301.

0780-01-65-.10 SCOPE OF AUDIT AND REPORT OF INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT.

Financial statements furnished pursuant to Rule 0780-01-65-.06 shall be examined by the independent certified public accountant. The audit of the insurer's financial statements shall be conducted in accordance with generally accepted auditing standards. In accordance with AU Section 319 of the Professional Standards of the AICPA, Consideration of Internal Control in a Financial Statement Audit, the independent certified public accountant should obtain an understanding of internal control sufficient to plan the audit. To the extent required by AU 319, for those insurers required to file a Management's Report of Internal Control over Financial Reporting pursuant to Rule 0780-01-65-.17, the independent certified public accountant should consider (as that term is defined in Statement on Auditing Standards (SAS) No. 102, Defining Professional Requirements in Statements on Auditing Standards or its replacement) the most recently available report in planning and performing the audit of the statutory financial statements. Consideration shall be given to the procedures illustrated in the Financial Condition Examiners Handbook promulgated by the NAIC as the independent certified public accountant deems necessary.

Authority: T.C.A. §§ 56-1-501(h) and 56-2-301.

0780-01-65-.11 NOTIFICATION OF ADVERSE FINANCIAL CONDITION.

(1) The insurer required to furnish the annual audited financial report shall require the

independent certified public accountant to report, in writing, within five (5) business days to the board of directors or its audit committee any determination by the independent certified public accountant that the insurer has materially misstated its financial condition as reported to the commissioner as of the balance sheet date currently under audit or that the insurer does not meet the minimum capital and surplus requirement of the Tennessee insurance laws and regulations as of that date. An insurer that has received a report pursuant to this Paragraph shall forward a copy of the report to the commissioner within five (5) business days of receipt of the report and shall provide the independent certified public accountant making the report with evidence of the report being furnished to the commissioner. If the independent certified public accountant fails to receive the evidence within the required five (5) business day period, the independent certified public accountant shall furnish to the commissioner a copy of its report within the next five (5) business days.

(2) No independent certified public accountant shall be liable in any manner to any person for any statement made in connection with the Paragraph (1) of this Rule if the statement is made in good faith in compliance with that Paragraph.

(3) If the accountant, subsequent to the date of the audited financial report filed pursuant to this Chapter, becomes aware of facts that might have affected his or her report, the accountant must take such action as prescribed in Volume 1, Section AU 561 of the Professional Standards of the AICPA.

Authority: T.C.A. §§ 56-1-501(h) and 56-2-301.

0780-01-65-.12 COMMUNICATION OF INTERNAL CONTROL RELATED MATTERS NOTED IN AN AUDIT.

(1) In addition to the annual audited financial report, each insurer shall furnish the commissioner with a written communication as to any unremediated material weaknesses in its Internal control over financial reporting noted during the audit. Such communication shall be prepared by the accountant within sixty (60) days after the filing of the annual audited financial report, and shall contain a description of any unremediated material weakness (as the term material weakness is defined by Statement on Auditing Standard 60, Communication of Internal Control Related Matters Noted in an Audit, or its replacement) as of December 31 immediately preceding (so as to coincide with the audited financial report discussed in Rule 0780- 01-65-.05(1)) in the insurer's Internal control over financial reporting noted by the accountant during the course of their audit of the financial statements. If no unremediated material weaknesses were noted, the communication should so state.

(2) The insurer is required to provide a description of remedial actions taken or proposed to correct unremediated material weaknesses, if the actions are not described in the accountant's communication.

Authority: T.C.A. §§ 56-1-501(h) and 56-2-301.

0780-01-65-.13 ACCOUNTANT'S LETTER OF QUALIFICATIONS.

The accountant shall furnish the insurer in connection with, and for inclusion in, the filing of the annual audited financial report, a letter stating:

(1) That the accountant is independent with respect to the insurer and conforms to the standards of his or her profession as contained in the Code of Professional Ethics

and pronouncements of the AICPA and the Rules of Professional Conduct of the Tennessee Board of Public Accountancy, or similar code;

(2) The background and experience in general, and the experience in audits of insurers of the staff assigned to the engagement and whether each is an independent certified public accountant. Nothing within this Chapter shall be construed as prohibiting the accountant from utilizing such staff as he or she deems appropriate where use is consistent with the standards prescribed by generally accepted auditing standards;

(3) That the accountant understands the annual audited financial report and his opinion thereon will be filed in compliance with this Chapter and that the commissioner will be relying on this information in the monitoring and regulation of the financial position of insurers;

(4) That the accountant consents to the requirements of Rule 0780-01-65-.14 and that the accountant consents and agrees to make available for review by the commissioner, or the commissioner's designee or appointed agent, the workpapers, as defined in Rule 0780-01-65-.14;

(5) A representation that the accountant is properly licensed by an appropriate state licensing authority and is a member in good standing in the AICPA; and

(6) A representation that the accountant is in compliance with the requirements of Rule 0780-01-65-.08.

Authority: T.C.A. §§ 56-1-501(h) and 56-2-301

0780-01-65-.14 AVAILABILITY AND MAINTENANCE OF INDEPENDENT CERTIFIED PUBLIC ACCOUNTANTS WORK PAPERS.

(1) Work papers are the records kept by the independent certified public accountant of the procedures followed, the tests performed, the information obtained, and the conclusions reached pertinent to the accountant's audit of the financial statements of an insurer. Work papers, accordingly, may include audit planning documentation, work programs, analyses, memoranda, letters of confirmation and representation, abstracts of company documents and schedules or commentaries prepared or obtained by the independent certified public accountant in the course of his or her audit of the financial statements of an insurer and which support the accountant's opinion.

(2) Every insurer required to file an audited financial report pursuant to this Chapter, shall require the accountant to make available for review by department examiners, all workpapers prepared in the conduct of the accountant's audit and any communications related to the audit between the accountant and the insurer, at the offices of the insurer, at the offices of the department or at any other reasonable place designated by the commissioner. The insurer shall require that the accountant retain the audit workpapers and communications until the department has filed a report on examination covering the period of the audit but no longer than seven (7) years from the date of the audit report.

(3) In the conduct of the aforementioned periodic review by the department examiners, it shall be agreed that photocopies of pertinent audit workpapers may be made and retained by the department. Such reviews by the department examiners shall be considered investigations and all working papers and communications obtained during the course of such investigations shall be afforded the same confidentiality as other

examination workpapers generated by the department as provided for under Tenn. Code Ann. § 56-1-411 and other statutory provisions.

Authority: T.C.A. §§ 56-1-411, 56-1-501(h), 56-2-301, 56-11-108, 56-11-109 and 56-46-109.

0780-01-65-.15 REQUIREMENTS FOR AUDIT COMMITTEES.

(1) This Rule shall not apply to foreign or alien insurers licensed in this state or an insurer that is a SOX Compliant Entity or a direct or indirect wholly-owned subsidiary of a SOX Compliant Entity.

(2) The audit committee shall be directly responsible for the appointment, compensation and oversight of the work of any accountant (including resolution of disagreements between management and the accountant regarding financial reporting) for the purpose of preparing or issuing the audited financial report or related work pursuant to this Chapter. Each accountant shall report directly to the audit committee.

(3) The audit committee of an insurer or group of insurers shall be responsible for overseeing the insurer's internal audit function and granting the person or persons performing the function suitable authority and resources to fulfill their responsibilities if required by 0780-01-65-.16 of this Chapter.

(4) ~~(3)~~ Each member of the audit committee shall be a member of the board of directors of the insurer or a member of the board of directors of an entity elected pursuant to Paragraph (~~6~~7) of this Rule and Rule 0780-01-65-.04(3).

(5) ~~(4)~~ In order to be considered independent for purposes of this Rule, a member of the audit committee may not, other than in his or her capacity as a member of the audit committee, the board of directors, or any other board committee, accept any consulting, advisory or other compensatory fee from the entity or be an affiliated person of the entity or any subsidiary thereof. However, if law requires board participation by otherwise non-independent members, that law shall prevail and such members may participate in the audit committee and be designated as independent for audit committee purposes, unless they are an officer or employee of the insurer or one of its affiliates.

(6) ~~(5)~~ If a member of the audit committee ceases to be independent for reasons outside the member's reasonable control, that person, with notice by the responsible entity to the state, may remain an audit committee member of the responsible entity until the earlier of the next annual meeting of the responsible entity or one year from the occurrence of the event that caused the member to be no longer independent.

(7) ~~(6)~~ To exercise the election of the controlling person to designate the audit committee for purposes of this Chapter, the ultimate controlling person shall provide written notice to the commissioners of the affected insurers. Notification shall be made timely prior to the issuance of the statutory audit report and include a description of the basis for the election. The election can be changed through notice to the commissioner by the insurer, which shall include a description of the basis for the change. The election shall remain in effect for perpetuity, until rescinded.

(8) ~~(7)~~ (a) The audit committee shall require the accountant that performs for an insurer any audit required by this Chapter to timely report to the audit committee in accordance with the requirements of SAS 61, Communication with Audit Committees, or its replacement, including:

1. All significant accounting policies and material permitted practices;

2. All material alternative treatments of financial information within statutory accounting principles that have been discussed with management officials of the insurer, ramifications of the use of the alternative disclosures and treatments, and the treatment preferred by the accountant; and

3. Other material written communications between the accountant and the management of the insurer, such as any management letter or schedule of unadjusted differences.

(b) If an insurer is a member of an insurance holding company system, the reports required by Paragraph ~~(7)~~ (8)(a) of this Rule may be provided to the audit committee on an aggregate basis for insurers in the holding company system, provided that any substantial differences among insurers in the system are identified to the audit committee.

(9) ~~(8)~~ The proportion of independent audit committee members shall meet or exceed the following criteria:

Prior Calendar Year Direct Written and Assumed Premiums		
$0 - $300,000,000	**Over $300,000,000 - $500,000,000**	**Over $500,000,000**
No minimum requirements. See also Note A and B.	Majority (50% or more) of members shall be independent. See also Note A and B.	Supermajority of members (75% or more) shall be independent. See also Note A.

Note A: The commissioner has authority afforded by state law to require the entity's board to enact improvements to the independence of the audit committee membership if the insurer is in a risk-based capital (RBC) action level event, as described in Title 56, chapter 46 of the Tennessee Code Annotated, meets one or more of the standards of an insurer deemed to be in hazardous financial condition, or otherwise exhibits qualities of a troubled insurer.

Note B: All insurers with less than five hundred million dollars ($500,000,000) in prior year direct written and assumed premiums are encouraged to structure their audit committees with at least a supermajority of independent audit committee members.

Note C: Prior calendar year direct written and assumed premiums shall be the combined total of direct premiums and assumed premiums from non-affiliates for the reporting entities.

(10) ~~(9)~~ An insurer with direct written and assumed premium, excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, less than five hundred million dollars ($500,000,000) may make application to the commissioner for a waiver from this Rule's requirements based upon hardship. The insurer shall file, with its annual statement filing, the approval for relief from this Rule with the states that it is licensed in or doing business in and the NAIC. If the nondomestic state accepts electronic filing with the NAIC, the insurer shall file the approval in an electronic format acceptable to the NAIC.

Authority: T.C.A. §§ 56-1-501(h), 56-2-301 and 56-46-101 et seq.

0780-01-65-.16 INTERNAL AUDIT FUNCTION REQUIREMENTS

(1) Exemption – An insurer is exempt from the requirements of this section if:

(a) The insurer has annual direct written and unaffiliated assumed premium, including international direct and assumed premium but excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, less than five hundred million dollars ($500,000,000); and

(b) If the insurer is a member of a group of insurers, the group has annual direct written and unaffiliated assumed premium including international direct and assumed premium, but excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, less than one billion dollars ($1,000,000,000).

(2) Function – The insurer or group of insurers shall establish an internal audit function providing independent, objective and reasonable assurance to the Audit committee and insurer management regarding the insurer's governance, risk management and internal controls. This assurance shall be provided by performing general and specific audits, reviews and tests and by employing other techniques deemed necessary to protect assets, evaluate control effectiveness and efficiency, and evaluate compliance with policies and regulations.

(3) Independence – In order to ensure that internal auditors remain objective, the internal audit function must be organizationally independent. Specifically, the internal audit function will not defer ultimate judgment on audit matters to others and shall appoint an individual to head the internal audit function who will have direct and unrestricted access to the board of directors. Organizational independence does not preclude dual-reporting relationships.

(4) Reporting – The head of the internal audit function shall report to the audit committee regularly, but no less than annually, on the periodic audit plan, factors that may adversely impact the internal audit function's independence or effectiveness, material findings from completed audits and the appropriateness of corrective actions implemented by management as a result of audit findings.

(5) Additional Requirements – If an insurer is a member of an insurance holding company system or included in a group of insurers, the insurer may satisfy the internal audit function requirements set forth in this section at the ultimate controlling parent level, an intermediate holding company level or the individual legal entity level.

Authority: T.C.A. §§ 56-1-501(h), 56-2-301 and 56-46-101 et seq.

0780-01-65-.17~~(16)~~ CONDUCT OF INSURER IN CONNECTION WITH THE PREPARATION OF REQUIRED REPORTS AND DOCUMENTS.

(1) No director or officer of an insurer shall, directly or indirectly:

(a) Make or cause to be made a materially false or misleading statement to an accountant in connection with any audit, review or communication required under this Chapter; or

(b) Omit to state, or cause another person to omit to state, any material fact necessary in order to make statements made, in light of the circumstances under which the statements were made, not misleading to an accountant in

connection with any audit, review or communication required under this Chapter.

(2) No officer or director of an insurer, or any other person acting under the direction thereof, shall directly or indirectly take any action to coerce, manipulate, mislead or fraudulently influence any accountant engaged in the performance of an audit pursuant to this Chapter if that person knew or should have known that the action, if successful, could result in rendering the insurer's financial statements materially misleading.

(3) For purposes of Paragraph (2) of this Rule, actions that, "if successful, could result in rendering the insurer's financial statements materially misleading" include, but are not limited to, actions taken at any time with respect to the professional engagement period to coerce, manipulate, mislead or fraudulently influence an accountant:

(a) To issue or reissue a report on an insurer's financial statements that is not warranted in the circumstances (due to material violations of statutory accounting principles prescribed by the commissioner, generally accepted auditing standards, or other professional or regulatory standards);

(b) Not to perform audit, review or other procedures required by generally accepted auditing standards or other professional standards;

(c) Not to withdraw an issued report; or

(d) Not to communicate matters to an insurer's audit committee.

Authority: T.C.A §§ 56-1-501, 56-1-501(h), 56-1-503 and 56-2-301.

0780-01-65-.18~~(17)~~ MANAGEMENT'S REPORT OF INTERNAL CONTROL OVER FINANCIAL REPORTING.

(1) Every insurer required to file an audited financial report pursuant to this Chapter that has annual direct written and assumed premiums, excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, of five hundred million dollars ($500,000,000) or more shall prepare a report of the insurer's or group of insurers' internal control over financial reporting, as these terms are defined in Rule 0780-01-65-.04. The report shall be filed with the commissioner along with the Communication of Internal Control Related Matters Noted in an Audit described under Rule 0780-01-65-.12. Management's Report of Internal Control over Financial Reporting shall be as of December 31 immediately preceding.

(2) Notwithstanding the premium threshold in Paragraph (1) of this Rule, the commissioner may require an insurer to file Management's Report of Internal Control over Financial Reporting if the insurer is in any RBC level event, or meets any one or more of the standards of an insurer deemed to be in hazardous financial condition as identified in the insurance code or as specifically described in Rule 0780-01-66.

(3) An insurer or a group of insurers that is

(a) directly subject to Section 404;

(b) part of a holding company system whose parent is directly subject to Section 404;

(c) not directly subject to Section 404 but is a SOX Compliant Entity; or

(d) a member of a holding company system whose parent is not directly subject to Section 404 but is a SOX Compliant Entity;

may file its or its parent's Section 404 Report and an addendum in satisfaction of this Rule's requirement provided that those internal controls of the insurer or group of insurers having a material impact on the preparation of the insurer's or group of insurers' audited statutory financial statements (those items included in Rule 0780-01-65-.06(2)(b)-(g)) were included in the scope of the Section 404 Report. The addendum shall be a positive statement by management that there are no material processes with respect to the preparation of the insurer's or group of insurers' audited statutory financial statements (those items included in Rule 0780-01-65-.06(2)(b)-(g)) excluded from the Section 404 Report. If there are internal controls of the insurer or Group of insurers that have a material impact on the preparation of the insurer's or group of insurers' audited statutory financial statements and those internal controls were not included in the scope of the Section 404 Report, the insurer or group of insurers may either file (i) a report under this Rule, or (ii) the Section 404 Report and a report under this Rule for those internal controls that have a material impact on the preparation of the insurer's or group of insurers' audited statutory financial statements not covered by the Section 404 Report.

(4) Management's Report of Internal Control over Financial Reporting shall include:

(a) A statement that management is responsible for establishing and maintaining adequate internal control over financial reporting;

(b) A statement that management has established internal control over financial reporting and an assertion, to the best of management's knowledge and belief, after diligent inquiry, as to whether its internal control over financial reporting is effective to provide reasonable assurance regarding the reliability of financial statements in accordance with statutory accounting principles;

(c) A statement that briefly describes the approach or processes by which management evaluated the effectiveness of its internal control over financial reporting;

(d) A statement that briefly describes the scope of work that is included and whether any internal controls were excluded;

(e) Disclosure of any unremediated material weaknesses in the internal control over financial reporting identified by management as of December 31 immediately preceding. Management is not permitted to conclude that the internal control over financial reporting is effective to provide reasonable assurance regarding the reliability of financial statements in accordance with statutory accounting principles if there is one or more unremediated material weaknesses in its internal control over financial reporting;

(f) A statement regarding the inherent limitations of internal control systems; and

(g) Signatures of the chief executive officer and the chief financial officer (or equivalent position/title).

(5) Management shall document and make available upon financial condition examination the basis upon which its assertions, required in Paragraph (4) of this Rule, above, are made. Management may base its assertions, in part, upon its review,

monitoring and testing of internal controls undertaken in the normal course of its activities.

(a) Management shall have discretion as to the nature of the internal control framework used, and the nature and extent of documentation, in order to make its assertion in a cost effective manner and, as such, may include assembly of or reference to existing documentation.

(b) Management's Report on Internal Control over Financial Reporting, required by Paragraph (1) of this Rule, and any documentation provided in support thereof during the course of a financial condition examination, shall be kept confidential by the commissioner.

Authority: **T.C.A. §§ 56-1-411, 56-1-501(h), 56-2-301, 56-46-105(b)(2).**

0780-01-65-.19~~(18)~~ EXEMPTIONS AND EFFECTIVE DATES.

(1) Upon written application of any insurer, the commissioner may grant an exemption from compliance with any and all provisions of this Chapter if the commissioner finds, upon review of the application, that compliance with this Chapter would constitute a financial or organizational hardship upon the insurer. An exemption may be granted at any time and from time to time for a specified period or periods. Within ten (10) days from a denial of an insurer's written request for an exemption from this Chapter, the insurer may request in writing a hearing on its application for an exemption. The hearing shall be held in accordance with the Tennessee Uniform Administrative Procedures Act, as codified in Title 4, Chapter 5, Part 3 of the Tennessee Code Annotated.

(2) Domestic insurers retaining a certified public accountant on the effective date of this Chapter who qualify as independent shall comply with this Chapter for the year ending December 31, 2009 and each year thereafter unless the commissioner permits otherwise.

(3) Domestic insurers not retaining a certified public accountant on the effective date of this Chapter who qualifies as independent may meet the following schedule for compliance unless the commissioner permits otherwise.

(a) As of December 31, 2009, file with the commissioner an audited financial report;

(b) For the year ending December 31, 2009 and each year thereafter, such insurers shall file with the commissioner all reports and communication required by this Chapter.

(4) Foreign insurers shall comply with this Chapter for the year ending December 31, 2009 and each year thereafter, unless the commissioner permits otherwise.

(5) The requirements of Rule 0780-01-65-.08(4) of this Chapter shall be in effect for audits of the year beginning January 1, 2010 and thereafter.

(6) The requirements of Rule 0780-01-65-.05(4) and Rule 0780-1-65-.15 of this Chapter are to be in effect January 1, 2010. An insurer or group of insurers that is not required to have independent audit committee members or only a majority of independent audit committee members (as opposed to a supermajority) because the total written and assumed premium is below the threshold and subsequently becomes

subject to one of the independence requirements due to changes in premium shall have one (1) year following the year the threshold is exceeded (but not earlier than January 1, 2010) to comply with the independence requirements. Likewise, an insurer that becomes subject to one of the independence requirements as a result of a business combination shall have one (1) calendar year following the date of acquisition or combination to comply with the independence requirements.

(7) The requirements of Rule 0780-01-65-.~~17~~18 of this Chapter are effective beginning with the reporting period ending December 31, 2010 and each year thereafter. An insurer or group of insurers that is not required to file a report because the total written premium is below the threshold and subsequently becomes subject to the reporting requirements shall have two (2) years following the year the threshold is exceeded (but not earlier than December 31, 2010) to file a report. Likewise, an insurer acquired in a business combination shall have two (2) calendar years following the date of acquisition or combination to comply with the reporting requirements.

(8) The requirements of Rule 0780-01-65-.16 are to be in effect January 1, 2020. If an insurer or group of insurers that is exempt from the Rule 0780-01-65-.16 requirements no longer qualifies for that exemption, it shall have one (1) year after the year the threshold is exceeded to comply with the requirements of Rule 0780-01-65-.16.

Authority: T.C.A. §§ 4-5-301 et seq., 56-1-501(h) and 56-2-301.

0780-01-65-.20~~(19)~~ CANADIAN AND BRITISH COMPANIES.

(1) In the case of Canadian and British insurers, the annual audited financial report shall be defined as the annual statement of total business on the form filed by such companies with their supervision authority duly audited by an independent chartered accountant.

(2) For such insurers, the letter required in Rule 0780-01-65-.07(2) shall state that the accountant is aware of the requirements relating to the annual audited financial report filed with the commissioner pursuant to Rule 0780-01-65-.05 and shall affirm that the opinion expressed is in conformity with those requirements.

Authority: T.C.A. §§ 56-1-501(h) and 56-2-301.

0780-01-65-.21~~(20)~~ SEVERABILITY PROVISION.

If any Rule or portion of a Rule of this Chapter or its applicability to any person or circumstance is held invalid by a court, the remainder of the Chapter or the applicability of the provision to other persons or circumstances shall not be affected.

Authority: T.C.A. §§ 56-1-501(h) and 56-2-301.

* 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 of the Department of Commerce and Insurance (board/commission/ other authority) on 05/18/2018 (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: 02/11/18

Rulemaking Hearing(s) Conducted on: (add more dates). 04/17/18

DENISE M. LEWIS
STATE OF TENNESSEE NOTARY PUBLIC
WILSON COUNTY, TENN.
My Commission Expires

Date: May 18, 2018

Signature: Julie Mix McPeak

Name of Officer: Julie Mix McPeak

Title of Officer: Commissioner, Department of Commerce and Insurance

Subscribed and sworn to before me on: 5/18/18

Notary Public Signature: Denise M Lewis

My commission expires on: 1/15/20

Agency/Board/Commission: Department of Commerce and Insurance

Rule Chapter Number(s): 0780-01-65

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

6/25/2018
Date

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PUBLICATIONS

Filed with the Department of State on: 6/28/18

Effective on: 9/26/18

Tre Hargett
Secretary of State

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Commerce and Insurance
DIVISION:	Fire Prevention
SUBJECT:	Adoption by Reference of Codes and Standards / Conflicts
STATUTORY AUTHORITY:	Tennessee Code Annotated, Sections 68-102-113 and 68-120-101.
EFFECTIVE DATES:	June 1, 2018 through November 28, 2018
FISCAL IMPACT:	The rule will not require local government to expend any funds. Any funds a local government will expend as a result of this rule will be entirely voluntary based on safety concerns identified at the local level.
STAFF RULE ABSTRACT:	This emergency rule adopts the most current published version of the 2018 National Fire Protection Association (NFPA) 101 (Life Safety Code) to allow more flexibility in the fire code as it relates to classroom door locking to prevent unwanted entry for educational occupancies, colleges and university instructional buildings. The Department is not adopting the requirement that the locking means be capable of being engaged without opening the door to ensure that schools will not be required to retrofit existing door hardware.

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 emergency rule will impact local governments.

Additional Information Required by Joint Government Operations Committee

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

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

The rule adopts the most current published version of the 2018 National Fire Protection Association (NFPA) 101 (Life Safety Code) to allow more flexibility in the fire code as it relates to classroom door locking to prevent unwanted entry for educational occupancies, colleges and university instructional buildings. The Department is not adopting the requirement that the locking means be capable of being engaged without opening the door to ensure that schools will not be required to retrofit existing door hardware.

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

T.C.A. §§ 68-102-113 and 68-120-101.

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

Students, teachers, school superintendents, municipalities and counties that operate schools, local fire inspectors have urged the Department of Commerce and Insurance to adopt codes that allow greater flexibility as the fire codes relate to school security.

(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;

The rule will not require local government to expend any funds. Any funds a local government will expend as a result of this rule will be entirely voluntary based on safety concerns identified at the local level.

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

Christopher Bainbridge, Director of Codes Enforcement, and Mary Beth Gribble, Director of Programs and Policy

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

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

(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

The Department of Commerce and Insurance, Division of Fire Prevention, 500 James Robertson Parkway, Nashville, TN 37243. Christopher Bainbridge, Director of Codes Enforcement, christopher.bainbridge@tn.gov, 615-741-6246; Mary Beth Gribble, Director of Programs and Policy, marybeth.gribble@tn.gov, 615-532-3272; Leigh Ferguson, Chief Counsel of Fire Prevention and Law Enforcement, leigh.j.ferguson@tn.gov, 615-360-4435.

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

The Department of Commerce and Insurance has also filed a Notice of Rulemaking Hearing to make this rule permanent.

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Sequence Number: 06-01-18
Rule ID(s): 6889
File Date: 6/1/18
Last Effective Day: 11/28/18

Emergency Rule Filing Form

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

Agency/Board/Commission:	Department of Commerce and Insurance
Division:	Division of Fire Prevention
Contact Person:	Leigh Ferguson
Address:	500 James Robertson Parkway
Zip:	37243
Phone:	615-360-4435
Email:	Leigh.j.ferguson@tn.gov

Revision Type (check all that apply):
X Amendment
___ New
___ Repeal

Statement of Necessity:
The Department of Commerce and Insurance, Division of Fire Prevention, commonly referred to as the State Fire Marshal's Office, recognizes that active shooter and armed intruder incidents in educational occupancies, schools, colleges and universities present an immediate danger to the public health, safety and welfare to citizens of Tennessee. The State Fire Marshal's Office considers the safety of students and teachers of paramount importance and is concerned that certain provisions in the currently adopted 2012 edition of the National Fire Protection Association (NFPA) 101, commonly referred to as the Life Safety Code, in Tenn. Comp. R. & Regs. 0780-02-02-.01(1), may restrict the installation of some safety features which may be utilized to protect against such dangers. NFPA 101 Life Safety Code addresses both new and existing buildings and is the primary code standard which protects occupants of buildings from the dangers of fire, including smoke, heat and toxic gases. The Life Safety Code also addresses situations not specifically related to fire, including crowd safety. The State Fire Marshal's Office has reviewed the 2018 edition of NFPA 101, to determine that this more recently published edition provides greater flexibility regarding the implementation of security devices and features in educational occupancies. The 2018 edition also adds provisions related to unwanted entry in educational and business occupancies. These provisions for new and existing schools allow flexibility while maintaining proven safety standards established in previously adopted editions of the Life Safety Code. Therefore, the State Fire Marshal's Office proposes adopting the 2018 edition of NFPA 101 Life Safety Code by emergency rule in accordance with T.C.A. § 4-5-208(a)(1), to allow educational occupancies the option of installing additional security features before the 2018-2019 school year begins; and subsequently, the State Fire Marshal's Office intends to initiate the rulemaking process, pursuant to T.C.A. §§ 4-5-203 and 4-5-206, to adopt the 2018 edition of NFPA 101.

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

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

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

CHAPTER 0780-02-02
CODES AND STANDARDS

TABLE OF CONTENTS

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

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

(1) Unless otherwise provided by applicable law or the provisions of this chapter, the required minimum standards for fire prevention, fire protection, and building construction safety in the State of Tennessee shall be those prescribed in the following publications:

(a) International Building Code (IBC), 2012 edition, published by the International Code Council (ICC), except for:

1. Chapter 11 Accessibility; and,

2. Chapter 34, Section 3411 Accessibility For Existing Buildings;

(b) The International Fuel Gas Code (IFGC), 2012 edition, published by the International Code Council (ICC);

(c) The International Mechanical Code (IMC), 2012 edition, published by the International Code Council (ICC);

(d) The International Plumbing Code (IPC), 2012 edition, published by the International Code Council (ICC);

(e) The International Property Maintenance Code (IPMC), 2012 edition, published by the International Code Council (ICC);

(f) The International Fire Code (IFC), 2012 edition, published by the International Code Council (ICC);

(g) The International Energy Conservation Code (IECC), 2012 edition, published by the International Code Council (ICC), except that the provisions of the International Energy Conservation Code, 2006 edition, shall apply to the following occupancy classifications as defined by the International Building Code (IBC), 2012 edition:

1. Moderate-hazard factory industrial, Group F-1;

2. Low-hazard factory industrial, Group F-2;

3. Moderate-hazard storage, Group S-1; and,

4. Low-hazard storage, Group S-2;

(Rule 0780-02-02, continued)

(h) The International Existing Building Code (IEBC), 2012 edition, published by the International Code Council (ICC);

(i) For state buildings, educational occupancies and any other occupancy requiring an inspection by the state fire marshal for initial licensure, NFPA 101 Life Safety Code, 2012 edition, published by the National Fire Protection Association (NFPA); ~~and~~ except that:~~,~~

1. For classrooms in existing and new educational occupancies, as defined by Tenn. Comp. R. & Regs. 0780-02-03-.01(d), 15.2.2.2.4 excluding (1): Classroom Door Locking to Prevent Unwanted Entry, NFPA 101 Life Safety Code, 2018 edition, published by the NFPA; or

2. For classrooms in existing and new colleges and university instructional buildings, 39.2.2.2.2 excluding (1): Classroom Door Locking to Prevent Unwanted Entry, NFPA 101 Life Safety Code, 2018 edition, published by the NFPA.

(j) No provision of the preceding cited publications shall be adopted that conflicts with:

1. The installation and service standards of portable fire extinguishers and fixed fire extinguisher systems in Tenn. Comp. R. & Regs. 0780-02-14-.02; and,

2. The standards for engaging in the liquefied petroleum gas business in Tenn. Comp. R. & Regs. 0780-02-17-.02.

(2) Paragraph (1) of this rule shall not be construed as adopting any provision of the cited publications which establishes:

(a) an optional or recommended, rather than mandatory, standard or practice; or,

(b) any agency, procedure, fees or penalties for administration or enforcement purposes inconsistent with the statute or rules.

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

0780-02-02-.02 REPEALED.

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

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

(Rule 0780-02-02, continued)
standards adopted by reference in Tenn. Comp. R. & Regs. 0780-02-02-.01.

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

0780-02-02-.04 CONFLICTS.

(1) In the event of a conflict or inconsistency between the codes adopted by reference in Tenn. Comp. R. & Regs. 0780-02-02-.01:

(a) the provisions of the International Building Code (IBC) shall prevail if such conflict or inconsistency relates to building height, building area restrictions or construction type;

(b) the provisions of the Tennessee Public Building Accessibility Act, T.C.A. § 68-120-201, et seq., shall prevail if such conflict or inconsistency relates to accessibility; and,

(c) the provisions of NFPA 101 Life Safety Code, 2018 edition, shall prevail if such conflict or inconsistency relates to classrooms in existing and new educational occupancies, colleges, and university instructional buildings; and

(~~c~~d) the more stringent provision shall prevail in all other cases.

(2) In the event of a conflict or inconsistency between either standard adopted by reference in Tenn. Comp. R. & Regs. 0780-02-02-.01 and 0780-02-01 (Electrical Installations), the provisions of Tenn. Comp. R. & Regs. 0780-02-01 (Electrical Installations) shall prevail.

(3) Nothing in this rule shall abrogate any right of appeal granted under T.C.A., Title 68, Chapters 102 and 120.

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

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

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

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

Date: 5/11/18

Signature: Julie Mix McPeak

Name of Officer: Julie Mix McPeak

Title of Officer: Commissioner of Commerce and Insurance

Subscribed and sworn to before me on: 5/11/18

Notary Public Signature: Denise M Lewis

My commission expires on: 1/15/20

DENISE M. LEWIS STATE OF TENNESSEE NOTARY PUBLIC WILSON COUNTY, TENN.

My Commission Expires

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

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

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

Herbert H Slatery III by Paul Ney, Chief Deputy

Herbert H. Slatery III
Attorney General and Reporter

5/16/18
Date

Department of State Use Only

Filed with the Department of State on: 6/1/18

Effective for: 180 *days

Effective through: 11/28/18

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

Tre Hargett

Tre Hargett
Secretary of State

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PUBLICATIONS

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: The University of Tennessee (Martin)

DIVISION:

SUBJECT: Student Rights and Responsibilities

STATUTORY AUTHORITY: Public Chapter 980, Acts of 2018

EFFECTIVE DATES: June 29, 2018 through December 26, 2018

FISCAL IMPACT: None

STAFF RULE ABSTRACT: Public Chapter 980 requires revisions to the Student Code of Conduct for The University of Tennessee at Martin.

The purposes of the revisions are to:

(1) Clarify that e-mail is an official method of communication used by the University about student conduct matters;
(2) Ensure that the student conduct process is carried out in a manner that is free from conflicts of interest consistent with due process of law and in cases involving allegations of sexual assault, dating violence, domestic violence, or stalking, must include protections for the accused student/respondent analogous to, and no less protective than, the conflict of interest provisions of Tennessee Code Annotated § 4-5-303;
(3) Ensure that in cases of sexual assault, dating violence, domestic violence, or stalking, at least seventy-two (72) hours prior to a hearing, the University shall provide the accused student/respondent with notice of the time, place, and date of the hearing; the name of each witness the University expects to present at the hearing and those the University may present if the need arises; notice of the right to request a copy of the University's investigative file, redacted in accordance with the Family Educational Rights and Privacy Act of 1974, (20 U.S.C. § 1232g), and the federal regulations implementing that statute, as amended; and notice of the right to request copies of all documents, copies of

all electronically stored information, and access to tangible evidence that the university has in its possession, custody, or control and may use to support claims or defenses, unless the use would be solely for impeachment; and

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

Impact on Local Governments

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

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

Additional Information Required by Joint Government Operations Committee

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

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

Public Chapter 980 requires revisions to the Student Code of Conduct for The University of Tennessee at Martin.

The purposes of the revisions are to:

(1) Clarify that e-mail is an official method of official method of communication used by the University about student conduct matters;

(2) Ensure that the student conduct process is carried out in a manner that is free from conflicts of interest consistent with due process of law and in cases involving allegations of sexual assault, dating violence, domestic violence, or stalking, must include protections for the accused student/respondent analogous to, and no less protective than, the conflict of interest provisions of Tennessee Code Annotated § 4-5-303;

(3) Ensure that in cases of sexual assault, dating violence, domestic violation, or stalking, at least seventy-two (72) hours prior to a hearing, the University shall provide the accused student/respondent with notice of the time, place, and date of the hearing; the name of each witness the University expects to present at the hearing and those the University may present if the need arises; notice of the right to request a copy of the University's investigative file, redacted in accordance with the Family Educational Rights and Privacy Act of 1974, (20 U.S.C. § 1232g), and the federal regulations implementing that statute, as amended; and notice of the right to request copies of all documents, copies of all electronically stored information, and access to tangible evidence that the University has in its possession, custody, or control and may use to support claims or defenses, unless the use would be solely for impeachment; and

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

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

Public Chapter 980 (2018)

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

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

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

None

(E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two

percent (2%) of the agency's annual budget or five hundred thousand dollars ($500,000), whichever is less;

None

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

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;

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

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

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

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Sequence Number: 06-29-18
Rule ID(s): 7137
File Date: 6/29/18
Last Effective Day: 12/26/18

Emergency Rule Filing Form

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

Agency/Board/Commission: The University of Tennessee (Martin)
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):
X Amendment
___ New
___ Repeal

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

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

Chapter Number	**Chapter Title**
1720-05-01	Student Rights and Responsibilities
Rule Number	**Rule Title**
1720-05-01-.02	Definitions
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	Penalties	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.

(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.

~~(28)~~(29) 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. 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) Engaging in retaliation.

1720-05-01-.05 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; 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 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 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 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, 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 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.

(7) Except for an interim suspension, disciplinary penalties shall not become effective until after opportunities for appeal have been exhausted. Penalties 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 in accordance with the University's Policy on Sexual Misconduct, Relationship Violence, and Stalking. In a case involving an allegation of

sexual misconduct, relationship violence, or stalking, 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. 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.

(8) For purposes of this rule, the term "student" shall mean a student or a student organization.

~~(1) 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.~~

~~(2) 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"). 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).~~

~~(3) 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.~~

~~(4) 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.

(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 guilty or not guilty. If a guilty 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 guilty plea has been entered, evidence in mitigation of the alleged offense shall be presented only after the Board has determined the issue of innocence or guilt.~~

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 guilt 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(4)(e). The Disciplinary Hearing Board may consider evidence introduced by the alleged victim as part of the University's proof.~~

~~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. In a case involving an allegation of sexual misconduct, relationship violence, or stalking, 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.~~

~~(5) 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.

(8) For purposes of this rule, the term "student" shall mean a student or a student organization.

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)**
Governor Bill Haslam				X	
Commissioner Candace McQueen				X	
Commissioner Jai Templeton	X				
Dr. Joe DiPietro	X				
Charles C. Anderson, Jr.	X				
Shannon Brown				X	
George E. Cates	X				
Dr. Terrance G. Cooper	X				
Spruell Driver, Jr.	X				
Dr. William E. Evans				X	
John N. Foy	X				
Crawford Gallimore	X			X	
Vicky B. Gregg	X				
Raja J. Jubran	X				
Mike Krause (non-voting)				X	
Brad A. Lampley	X				
Dr. Beauvais Lyons (non-voting)					
Andrew P. McBride	X				
Sharon J. Pryse	X				
David A. Shepard	X				
John D. Tickle	X				
Charles Weber (non-voting)					
Julia T. Wells	X				
Charles E. Wharton	X				
Tommy G. Whittaker				X	

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

Date: June 28, 2018

Signature: [signature]

Name of Officer: Matthew Scoggins

Title of Officer: General Counsel

Subscribed and sworn to before me on: June 28, 2018

Notary Public Signature: Lynette Russell

My commission expires on: 12-4-18

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

Rule Chapter Number(s): 1720-05-01 Student Rights and Responsibilities

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

Herbert H. Slatery III
Attorney General and Reporter

6/29/2018
Date

Department of State Use Only

Filed with the Department of State on: 6/29/18

Effective for: 180 *days

Effective through: 12/26/18

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

Tre Hargett
Secretary of State

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PUBLICATIONS

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: University of Tennessee (Health Science Center)

DIVISION:

SUBJECT: Student Rights and Responsibilities

STATUTORY AUTHORITY: Public Chapter 980, Acts of 2018

EFFECTIVE DATES: June 29, 2018 through December 26, 2018

FISCAL IMPACT: None

STAFF RULE ABSTRACT: Public Chapter 980 requires revisions to the Student Code of Conduct for The University of Tennessee Health Science Center.

The purposes of the revisions are to:

(1) Clarify that e-mail is an official method of communication used by the University about student conduct matters;

(2) Ensure that the student conduct process is carried out in a manner that is free from conflicts of interest consistent with due process of law and in cases involving allegations of sexual assault, dating violence, domestic violence, or stalking, must include protections for the accused student/respondent analogous to, and no less protective than, the conflict of interest provisions of Tennessee Code Annotated § 4-5-303;

(3) Ensure that in cases of sexual assault, dating violence, domestic violence, or stalking, at least seventy-two (72) hours prior to a hearing, the University shall provide the accused student/respondent with notice of the time, place, and date of the hearing; the name of each witness the University expects to present at the hearing and those the University may present if the need arises; notice of the right to request a copy of the University's investigative file, redacted in accordance with the Family Educational Rights and Privacy Act of 1974, (20 U.S.C. § 1232g), and the

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

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

Impact on Local Governments

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

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

Additional Information Required by Joint Government Operations Committee

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

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

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(1) Clarify that e-mail is an official method of official method of communication used by the University about student conduct matters;

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

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

Public Chapter 980 (2018)

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

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

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

None

(E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two

percent (2%) of the agency's annual budget or five hundred thousand dollars ($500,000), whichever is less;

None

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

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;

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

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

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

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Sequence Number: 06-31-18
Rule ID(s): 7140
File Date: 6/29/18
Last Effective Day: 12/26/18

Emergency Rule Filing Form

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

Agency/Board/Commission: The University of Tennessee (Health Science Center)
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):
X Amendment
___ New
___ Repeal

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

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

Chapter Number	**Chapter Title**
1720-03-03	Student Rights and Responsibilities
Rule Number	**Rule Title**
1720-03-03-.02	Definitions
1720-03-03-.08	Hearing Procedures

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	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.

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.

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.

(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). Efforts are made to keep penalties 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 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 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 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 imposed most commonly 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 maybe 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 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 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 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 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 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, 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 listed above may be imposed for any single violation of the Standards of Conduct.

(6) Except for an interim suspension, disciplinary penalties shall not become effective until after opportunities for appeal have been exhausted. Penalties 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.

1720-03-03-.06 NO CONTACT DIRECTIVES. 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.

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.

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 of the UT Health Science Center, 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 or, in the absence of applicable policies or procedures, by the Chancellor of the UT Health Science Center 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 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 in accordance with the University's Policy on Sexual Misconduct, Relationship Violence, and Stalking. In a case involving an allegation of sexual misconduct, relationship violence, or stalking, 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. 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.

(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) When, in the judgment of the Chancellor of the University of Tennessee, Health Science Center, conditions are such than 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 than will ensure the orderly functioning of the University and at the same time safeguard the basic rights of the students.

~~(1) Unless otherwise specified in the published policies and procedures of the UT Health Science Center, 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. § 4-5-108 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) Hearing Panel - 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 or, in the absence of applicable policies or procedures, by the Chancellor of the UT Health Science Center 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 or his/her designee upon the request of any party to a hearing.

(c) 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(1)(d).

(d) 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. In a case involving an allegation of sexual misconduct, relationship violence, or stalking, 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.

(2) The decision of any board or administrative officer of The University of Tennessee is subject to review by the Chancellor.

(3) For purposes of this rule, the term "student" shall mean a student or a student organization.

(4) When, in the judgment of the Chancellor of the University of Tennessee, Health Science Center, conditions are such than 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 than will ensure the orderly functioning of the University and at the same time safeguard the basic rights of the students.

1720-03-03-.09 STUDENT IDENTIFICATION CARDS.

(1) All currently registered students are required to have a UT Health Science Center Student 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

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 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.

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 in accordance with the University's Policy on Sexual Misconduct, Relationship Violence, and Stalking. In a case involving an allegation of sexual misconduct, relationship violence, or stalking, 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. 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.

(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) When, in the judgment of the Chancellor of the University of Tennessee, Health Science Center, conditions are such than 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 than 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.

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

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

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

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

Date: June 28, 2018

Signature:

Name of Officer: Matthew Scoggins

Title of Officer: General Counsel

Subscribed and sworn to before me on: June 28, 2018

Notary Public Signature: Lynette Russell

My commission expires on: 12-4-18

Agency/Board/Commission: The University of Tennessee (Health Science Center)

Rule Chapter Number(s): 1720-03-03 Student Rights and Responsibilities

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

Herbert H. Slatery III
Attorney General and Reporter

6/29/2018
Date

Department of State Use Only

Filed with the Department of State on: 6/29/18

Effective for: 180 *days

Effective through: 12/26/18

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

Tre Hargett
Secretary of State

RECEIVED
2018 JUN 29 PM 4:20
SECRETARY OF STATE
PUBLIC TRANS

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	University of Tennessee
DIVISION:	
SUBJECT:	Student Code
STATUTORY AUTHORITY:	Public Chapter 980 (2018)
EFFECTIVE DATES:	June 29, 2018 through December 26, 2018
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	Public Chapter 980 requires revisions to the Student Code of Conduct for The University of Tennessee at Chattanooga.

The purposes of the revisions are to:

(1) Clarify that e-mail is an official method of communication used by the University about student conduct matters;

(2) Ensure that the student conduct process is carried out in a manner that is free from conflicts of interest consistent with due process of law and in cases involving allegations of sexual assault, dating violence, domestic violence, or stalking, must include protections for the accused student/respondent analogous to, and no less protective than, the conflict of interest provisions of Tennessee Code Annotated § 4-5-303;

(3) Ensure that in cases of sexual assault, dating violence, domestic violation, or stalking, at least seventy-two (72) hours prior to a hearing, the University shall provide the accused student/respondent with notice of the time, place, and date of the hearing; the name of each witness the University expects to present at the hearing and those the University may present if the need arises; notice of the right to request a copy of the University's investigative file, redacted in accordance with the Family Educational Rights and Privacy Act of 1974, (20 U.S.C. § 1232g), and the

Impact on Local Governments

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

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

Additional Information Required by Joint Government Operations Committee

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

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

Public Chapter 980 requires revisions to the Student Code of Conduct for The University of Tennessee at Chattanooga.

The purposes of the revisions are to:

(1) Clarify that e-mail is an official method of official method of communication used by the University about student conduct matters;

(2) Ensure that the student conduct process is carried out in a manner that is free from conflicts of interest consistent with due process of law and in cases involving allegations of sexual assault, dating violence, domestic violence, or stalking, must include protections for the accused student/respondent analogous to, and no less protective than, the conflict of interest provisions of Tennessee Code Annotated § 4-5-303;

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

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

Public Chapter 980 (2018)

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

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

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

None

(E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two

percent (2%) of the agency's annual budget or five hundred thousand dollars ($500,000), whichever is less;

None

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

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;

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

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

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

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Nashville, TN 37243
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Email: publications.information@tn.gov

For Department of State Use Only

Sequence Number: 06-33-18
Rule ID(s): 7142
File Date: 6/29/18
Last Effective Day: 12/26/18

Emergency Rule Filing Form

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

Agency/Board/Commission: The University of Tennessee (Chattanooga)
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):
X Amendment
___ New
___ Repeal

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

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

Chapter Number	**Chapter Title**
1720-02-05	Student Code
Rule Number	**Rule Title**
1720-02-05-.02	Definitions
1720-02-05-.06	Due Process and Student Rights
1720-02-05-.07	Student Conduct Hearing Procedures

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.

(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"), 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.

(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. 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) The term "UAPA" means the Uniform Administrative Procedures Act, Tennessee Code Annotated § 4-5-101 et seq.

(30) 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:

(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.

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

(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) Complaints

(a) 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.

(b) All charges shall be presented to the accused student in written form.

(3) Hearing Options

(a) 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).

(b) 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.

(c) A requested hearing shall be scheduled promptly after receipt of the request.

(d) 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.

(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 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) Hearing Procedures – The Student Conduct Board or University Hearing Officer sitting alone will conduct the hearing within the following general guidelines:

(a) All University hearings shall be closed to the public.

(b) 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).

(c) 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 he limited.

(d) All procedural questions are determined by the University Hearing Officer.

(e) 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.

(f) The standard for a finding of responsible is a preponderance of the evidence.

(g) 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.

(h) An appropriate record will be made of the hearing procedures. Deliberations shall not be recorded. Defects in the record will not invalidate the proceedings.

(6) 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 1720-02-05-.06(4).

~~(1) Complaints~~

~~(a) 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.~~

~~(b) All charges shall be presented to the accused student in written form.~~

~~(2) Hearing Options~~

~~(c) 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).~~

~~(d) 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.~~

~~(e) A requested hearing shall be scheduled promptly after receipt of the request.~~

~~(f) 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. § 4-5-108 et seq.), 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) Hearing Procedures – The Student Conduct Board or University Hearing Officer sitting alone will conduct the hearing within the following general guidelines:~~

~~(g) All University hearings shall be closed to the public.~~

~~(h) 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).~~

~~(i) 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.~~

~~(j) All procedural questions are determined by the University Hearing Officer.~~

~~(k) 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.~~

~~(l) The standard for a finding of responsible is a preponderance of the evidence.~~

~~(m) 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.~~

~~(n) An appropriate record will be made of the hearing procedures. Deliberations shall not be recorded. Defects in the record will not invalidate the proceedings.~~

~~(4) 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:

(a) Warning. A notice that the student is violating or has violated the Standards of Conduct.

(b) 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).

(c) 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.

(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 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.

(f) 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.

(g) 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.

(h) 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.

(i) 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:

(a) Warning. A notice that the student organization is violating or has violated the Standards of Conduct.

(b) 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.

(c) 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.

(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 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.

(f) 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:

(a) A statement that he/she appeals the decision;

(b) 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:

(a) Uphold the decision;

(b) Amend the decision;

(c) Return the case for reconsideration; or

(d) 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.

(a) 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.

(b) 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".

(c) 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)
Governor Bill Haslam				X	
Commissioner Candace McQueen				X	
Commissioner Jai Templeton	X				
Dr. Joe DiPietro	X				
Charles C. Anderson, Jr.	X				
Shannon Brown				X	
George E. Cates	X				
Dr. Terrance G. Cooper	X				
Spruell Driver, Jr.	X				
Dr. William E. Evans				X	
John N. Foy	X				
Crawford Gallimore	X			X	
Vicky B. Gregg	X				
Raja J. Jubran	X				
Mike Krause (non-voting)				X	
Brad A. Lampley	X				
Dr. Beauvais Lyons (non-voting)					
Andrew P. McBride	X				

Sharon J. Pryse	X				
David A. Shepard	X				
John D. Tickle	X				
Charles Weber (non-voting)					
Julia T. Wells	X				
Charles E. Wharton	X				
Tommy G. Whittaker				X	

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

Date: June 28, 2018

Signature: [signature]

Name of Officer: Matthew Scoggins

Title of Officer: General Counsel

Subscribed and sworn to before me on: June 28, 2018

Notary Public Signature: Lynette Russell

My commission expires on: 12-4-18

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

Rule Chapter Number(s): 1720-02-05 Student Code

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

Herbert H. Slatery III
Attorney General and Reporter

6/29/2018
Date

Department of State Use Only

Filed with the Department of State on: 6/29/18

Effective for: 180 *days

Effective through: 12/26/18

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

Tre Hargett
Secretary of State

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PUBLIC INFORMATION

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: University of Tennessee

DIVISION:

SUBJECT: Student Code of Conduct

STATUTORY AUTHORITY: Public Chapter 980 (2018)

EFFECTIVE DATES: June 29, 2018 through December 26, 2018

FISCAL IMPACT: None

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

The purposes of the revisions are to:

(1) Clarify that e-mail is an official method of communication used by the University about student conduct matters;

(2) Ensure that the student conduct process is carried out in a manner that is free from conflicts of interest consistent with due process of law and in cases involving allegations of sexual assault, dating violence, domestic violence, or stalking, must include protections for the accused student/respondent analogous to, and no less protective than, the conflict of interest provisions of Tennessee Code Annotated § 4-5-303;

(3) Ensure that in cases of sexual assault, dating violence, domestic violation, or stalking, at least seventy-two (72) hours prior to a hearing, the University shall provide the accused student/respondent with notice of the time, place, and date of the hearing; the name of each witness the University expects to present at the hearing and those the University may present if the need arises; notice of the right to request a copy of the University's investigative file, redacted in accordance with the Family Educational Rights and Privacy Act of 1974, (20 U.S.C. § 1232g), and the federal regulations implementing that statute, as amended;

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

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

Impact on Local Governments

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

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

Additional Information Required by Joint Government Operations Committee

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

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

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

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(1) Clarify that e-mail is an official method of official method of communication used by the University about student conduct matters;

(2) Ensure that the student conduct process is carried out in a manner that is free from conflicts of interest consistent with due process of law and in cases involving allegations of sexual assault, dating violence, domestic violence, or stalking, must include protections for the accused student/respondent analogous to, and no less protective than, the conflict of interest provisions of Tennessee Code Annotated § 4-5-303;

(3) Ensure that in cases of sexual assault, dating violence, domestic violation, or stalking, at least seventy-two (72) hours prior to a hearing, the University shall provide the accused student/respondent with notice of the time, place, and date of the hearing; the name of each witness the University expects to present at the hearing and those the University may present if the need arises; notice of the right to request a copy of the University's investigative file, redacted in accordance with the Family Educational Rights and Privacy Act of 1974, (20 U.S.C. § 1232g), and the federal regulations implementing that statute, as amended; and notice of the right to request copies of all documents, copies of all electronically stored information, and access to tangible evidence that the University has in its possession, custody, or control and may use to support claims or defenses, unless the use would be solely for impeachment; and

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

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

Public Chapter 980 (2018)

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

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

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

None

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

None

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

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

Matthew Scoggins
General Counsel
The University of Tennessee

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

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

Matthew Scoggins
General Counsel
The University of Tennessee

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

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

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

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

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Sequence Number: 06-35-18
Rule ID(s): 7144
File Date: 6/29/18
Last Effective Day: 12/26/18

Emergency Rule Filing Form

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

Agency/Board/Commission: The University of Tennessee (Knoxville)
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):
X Amendment
___ New
___ Repeal

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

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

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

RULES
OF
THE UNIVERSITY OF TENNESSEE
(KNOXVILLE)

CHAPTER 1720-04-03
STUDENT CODE OF CONDUCT

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

1720-04-03-.01 PREAMBLE.

(1) Students at the University of Tennessee are members of both the University community and the larger community of which the University is a part. Accordingly, students are responsible for conducting themselves in a lawful manner as well as in compliance with University rules and policies. In addition, the University has developed a set of aspirational goals titled, Principles of Civility and Community, which encourages all members of the University community to foster a learning environment where diversity is valued, respected, and celebrated.

(2) The University has established the Student Code of Conduct ("Code") in order to advance the mission of the University and sustain a culture of excellence by: maintaining a safe learning environment; requiring students to conduct themselves in ways that allow for their personal growth and development as well as others, in the most positive manner possible; protecting the rights and privileges of all members of the University community; providing a basis for orderly conduct of the affairs of the University; promoting a positive relationship between the University and its surrounding community; preserving the University's reputation and property; encouraging students to engage in conduct that brings credit to themselves and the University; and ensuring that each student who matriculates at the University graduates ready to contribute to society as an ethical and law-abiding citizen.

(3) The University's behavioral standards are set forth in the Code's Standards of Conduct (Section .04). Students who engage in conduct that is inconsistent with the Standards of Conduct are subject to University disciplinary action. The process by which the University investigates and resolves alleged violations of the Standards of Conduct is called the student conduct process. The student conduct process resolves allegations of misconduct but also is an educational process designed to promote learning and development as it relates to appropriate decision making. The student conduct process is consistent, fair, and provides means of resolution that are commensurate with the skills and abilities of the participants in the process.

(4) The effectiveness of the student conduct process rests partially upon the participation of all members of the University community. Active participation in the process by students, faculty, and staff reflects a willingness to address the difficult issues brought before them for the betterment of individual students and the University community. This involvement is vital to the establishment of true community standards.

(5) Authority and responsibility relating to the Code are delegated to the Vice Chancellor for Student Life, who has delegated certain authority and responsibility to the Office of Student Conduct and Community Standards ("SCCS").

(6) The University is committed to respecting students' constitutional rights. The Code shall be interpreted in a way that does not violate students' constitutional rights, including, without limitation, the rights protected by the First Amendment to the United States Constitution.

(7) Students are responsible for being fully acquainted with and for complying with the Code, the applicable undergraduate or graduate catalog, the student handbook (Hilltopics), and other rules and policies relating to students.

1720-04-03-.02 JURISDICTION.

(1) Geographical Limits. The Code applies to conduct that occurs on University-controlled property. However, with respect to conduct that occurs off of University-controlled property, the University has the discretion under the Code to discipline a student for conduct that violates the Standards of Conduct only if the student's conduct: (1) occurs in connection with a University-affiliated activity including, without limitation, an overseas study program or a clinical, field, internship, or in-service experience; (2) consists of academic dishonesty or research misconduct; (3) is prohibited by local, state, or federal law, and the conduct was committed within the Knoxville Area (or, for UTSI students, the conduct was committed within Coffee County or Franklin County); (4) is fairly attributable to a student organization based on a consideration of the criteria in Section .02(4); (5) is committed against another member of the University community; or (6) threatens, or indicates that the student poses a threat to, the health, safety, or welfare of others or the security of any person's property including, without limitation, drug-related offenses, arson, assault, fraud, hazing, participation in group violence, sexual misconduct, relationship violence, stalking, and theft.

(2) Professional and Ethical Standards. Graduate or professional programs within the University may take separate and independent academic action against students for alleged violations of professional and/or ethical standards using procedures other than those contained in the Code.

(3) Responsibility for Conduct. Each student shall be responsible for his/her conduct from the time of application for admission through the actual awarding of a degree, even though conduct may occur before classes begin or after classes end, as well as during the academic year and during periods between terms of actual enrollment (and even if his/her conduct is not discovered until after a degree is awarded).

(4) Student Organizations' Responsibility for Violations of the Standards of Conduct. Notwithstanding anything in the Code to the contrary, a student organization may be found responsible for conduct that violates the Standards of Conduct only if the conduct is fairly attributable to the student organization. Whether conduct is fairly attributable to the student organization will be determined by SCCS based on a totality of the following

criteria:

(a) Whether the misconduct was endorsed by one (1) or more officers of the student organization ("endorsed by" means: having prior knowledge that the misconduct was reasonably likely to occur and failing to take reasonable preventative or corrective action; failing to attempt to stop known misconduct while it is occurring; and/or helping to plan, promote, or carry out the misconduct);

(b) Whether the misconduct occurred in connection with an activity:

1. Financed by the student organization and/or one (1) or more members or alumni of the student organization who contributed personal funds in lieu of organizational funds;

2. Related to initiation into, admission into, affiliation with, or as a condition for continued membership in the student organization; and/or

3. Advertised, promoted, or publicized in such a way that a reasonable student viewing or hearing the advertisement, promotion, or publication would believe that the activity was affiliated with the student organization.

(c) Whether the misconduct occurred on property owned, controlled, rented, leased, and/or used by the student organization and/or any of its members/alumni acting on the student organization's behalf; and/or

(d) Whether a member of the student organization attempted to conceal the activity connected with the misconduct or conceal the misconduct of another member of the student organization.

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

(1) Independent Action. The Code has been adopted in furtherance of the University's interests and serves to supplement, rather than substitute for, the enforcement of civil and criminal law. Accordingly, University disciplinary action may be instituted against a student whose conduct potentially violates both criminal law and the Standards of Conduct without regard to the pending status of criminal charges or civil litigation. At the discretion of SCCS, disciplinary action relating to a violation of the Standards of Conduct may be carried out prior to, simultaneously with, or following criminal proceedings. Students alleged to have violated the Standards of Conduct may not challenge any aspect of the University's student conduct process on the grounds that criminal charges, civil litigation, or other University proceedings regarding the same incident are pending or have been terminated, dismissed, reduced, or have not yet been adjudicated.

(2) University's Interaction with Other Entities. The University will cooperate with law enforcement and other government agencies in the enforcement of criminal law on University-controlled property and in the conditions imposed by criminal courts for the rehabilitation of students who have violated the criminal law.

(3) Withdrawals. If a Respondent voluntarily withdraws from the University before the conclusion of the student conduct process, SCCS retains the right to investigate and resolve the allegations made against the Respondent as a condition of the Respondent being allowed to re-enroll in the University. A disciplinary hold may remain in place or be implemented after the student withdraws in order to enforce this Section .03(3).

(4) Time Extensions and Rescheduling. Any time period described in the Code may be extended for good cause at the discretion of SCCS. Any meeting or hearing described in the Code may be rescheduled for good cause at the discretion of SCCS.

(5) Voluntary Impairment. A student's voluntary impairment to themselves resulting from the use and/or consumption of alcohol, drugs, chemicals, and/or other substances does not excuse or diminish a violation of the Code, except as provided in Section .11 (Policy on Amnesty for Individual Good Samaritans and Students in Need of Emergency Medical Attention).

(6) Other Rights – Sexual Misconduct, Relationship Violence, Stalking, or Retaliation. In addition to rights granted in the Code, in cases involving an allegation of sexual misconduct, relationship violence, stalking, or retaliation, the Complainant and the Respondent shall have the rights outlined in the University's policies and procedures for investigating and resolving complaints of sexual misconduct, relationship violence, stalking, or retaliation in accordance with Title IX of the Education Amendments of 1972, the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, and other applicable law.

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

(1) Academic Dishonesty. Cheating, plagiarism, or any other act of academic dishonesty, including, without limitation, an act in violation of the Honor Statement.

(2) False Information. Providing false information to a University official.

(3) Misuse of Information in Connection with University Investigation or Hearing. Falsifying, distorting, misrepresenting, or withholding information in connection with a University investigation or hearing, except as provided in Section .05(1)(i).

(4) Misconduct Relating to Records or Identification. Forging, altering, destroying, falsifying, or misusing records or identification, whether in print or electronic form.

(5) Harm to Others. Causing physical harm to any person; endangering the health, safety, or welfare of any person; engaging in conduct that causes a reasonable person to fear harm to his/her health or safety; or making an oral or written statement that an objectively reasonable person hearing or reading the statement would interpret as a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals.

(6) Harassment. Unwelcome conduct that is so severe or pervasive, and objectively offensive, that it substantially interferes with the ability of a person to work, learn, live, or participate in or benefit from the services, activities, or privileges provided by the University. In no event shall this rule be construed to discipline a student for speech protected by the First Amendment to the United States Constitution (e.g., mere insulting or offensive speech).

(7) Sexual Misconduct, Relationship Violence, Stalking, and/or Retaliation. Violating the University's Policy on Sexual Misconduct, Relationship Violence, Stalking, and/or Retaliation.

(8) Invasion of Privacy. Invasion of another person's privacy when that person has a reasonable expectation of privacy, including, without limitation, using electronic or other means to make a video or photographic record of any person in a location in which the person has a reasonable expectation of privacy, without the person's knowledge or consent. This includes, but is not limited to, making a video or photographic record of a person in shower/locker rooms or restrooms. The storing, sharing, and/or distributing of such nonconsensual recordings by any means is also prohibited.

(9) Private or Public Property. Any of the following conduct with respect to private or public property, including, without limitation, University-controlled property: theft; misappropriation; unauthorized possession, use, sale, duplication, or entry; vandalism; destruction; damage; or conduct that is reasonably likely to cause damage.

(10) Hazing. Any intentional or reckless act, on or off University-controlled property, by one (1) student, acting alone or with others, which is directed against any other student, which endangers the mental or physical health, safety, or welfare of that student, or which induces or coerces a student to endanger his or her mental or physical health, safety, or welfare. "Hazing" does not include customary athletic events or similar contests or competitions and is limited to those actions taken and situations created in connection with initiation into or affiliation with any organization.

(11) Disorderly Conduct. Fighting or other physically violent or physically threatening conduct; creating a hazardous or physically offensive condition by any act that serves no legitimate purpose; making noise that could unreasonably disturb others who are carrying on lawful activities; or conduct that breaches the peace.

(12) Lewd, Indecent, or Obscene Conduct. Engaging in lewd, indecent, or obscene conduct, including, without limitation, public exposure of one's sexual organs, public urinating, and public sexual acts.

(13) Imminent Lawless Action. Engaging in speech either orally or in writing that is directed to inciting or producing imminent lawless action and is likely to incite or produce such action.

(14) Fire Safety. Any act of arson; falsely reporting a fire, the presence of an explosive or incendiary device, or other emergency; setting off a false fire alarm; or tampering with, removing, or damaging fire alarms, fire extinguishers or any other safety or emergency equipment from its proper location except when removed in a situation in which there is a reasonable belief of the need for such equipment.

(15) University Keys, Access Cards, and Identification. Possessing, using, or duplicating University keys, University access cards, or University identification cards without authorization from the University.

(16) Information Technology. Theft, misuse, or unauthorized use of information technology facilities, resources, or access codes, including, without limitation: unauthorized entry into or transfer of a file; using another person's identification and/or password without that person's consent; using information technology facilities or resources to interfere with the work of another student, faculty member, staff member, or other member of the University community; using information technology facilities or resources to interfere with normal operation of a University information technology system or network; circumventing University information technology system or network security; using information technology facilities or resources in violation of copyright laws; falsifying an e-mail

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

(17) Weapons. Possessing, carrying, using, storing, or manufacturing any weapon on University-controlled property or in connection with a University-affiliated activity, unless authorized in writing by the Chief of Police or his/her designee or unless federal or state law affirmatively gives a student a right, irrespective of the Code, to possess or carry a weapon on University-controlled property or in connection with a University-affiliated activity.

(18) Alcohol-Related Conduct – University Property or University Activities. Consuming, manufacturing, possessing, distributing, dispensing, selling, or being under the influence of alcoholic beverages on University-controlled property or in connection with a University-affiliated activity unless expressly permitted by University policy.

(19) Alcohol-Related Conduct Prohibited by Law. Consuming, manufacturing, possessing, distributing, dispensing, selling, or being under the influence of alcoholic beverages, if prohibited by federal, state, or local law.

(20) Providing Alcohol to Underage Person. Providing an alcoholic beverage to a person younger than twenty-one (21) years of age, unless permitted by law.

(21) Drugs and Drug Paraphernalia. Using, manufacturing, possessing, distributing, selling, dispensing, or being under the influence of drugs, if prohibited by federal, state, or local law; using, manufacturing, possessing, distributing, or selling drug paraphernalia, if prohibited by federal, state, or local law; using or possessing a prescription drug if the prescription was not issued to the student; or distributing or selling a prescription drug to a person to whom the prescription was not originally issued.

(22) Failure to Fulfill a University Financial Obligation. Failing to timely fulfill a University bill, account, or other financial obligation owed to the University.

(23) Failure to Respond, Comply, or Identify. Failing to respond to a request to report to a University administrative office; failing to comply with a lawful directive of a University employee or other public official acting within the scope of his/her duties, except as provided in Section .05(1)(i); or failing to identify oneself to a University employee or other public official acting within the scope of his/her duties when requested to do so.

(24) Failure to Appear. Failing to appear at a University hearing, including, without limitation, a hearing of a University conduct board, following a request to appear either as a party or as a witness.

(25) Violation of Interim Administrative Actions, Disciplinary Sanctions, or Conditions of Re-Enrollment. Violating the terms of a no-contact directive, an interim restriction, a disciplinary sanction, or a condition of re-enrollment imposed by the University.

(26) Obstruction or Disruption of University Activity. Obstructing or disrupting teaching, learning, studying, research, public service, administration, disciplinary proceedings, emergency services, or any other University-affiliated activity, or the free flow of pedestrian or vehicular traffic on University-controlled property. In no event shall this rule be construed to discipline a student for speech protected by the First Amendment to the United States Constitution.

(27) Violation of University Policy or Rule. Violating a University policy or rule, including, without limitation, University policies or rules relating to facilities' use, smoking, the acceptable use of information technology resources, research misconduct, finder's fees relating to clinical investigations involving human subjects or access to University data or materials, University libraries, dining services, parking or transportation, University identification card use, sexual harassment, residence halls, and registered student organizations.

(28) Act Prohibited by Law. Committing an act that is prohibited by local, state, or federal law.

(29) Attempted Violation; Accessory to Violation. Attempting to commit a violation of a Standard of Conduct or being an accessory to the commission of an act or attempted act in violation of a Standard of Conduct.

(30) Retaliation. Engaging in retaliation. Retaliation is an act or omission committed by a student because of another person's participation in a protected activity that would discourage a reasonable person from engaging in protected activity. Retaliation violates the Standards of Conduct regardless of whether the underlying allegation of a violation of the Standards of Conduct is ultimately found to have merit. Retaliation can include, without limitation: (1) an act or omission committed against a person's family, friends, advisors, and/or other persons reasonably expected to provide information in connection with a University investigation or hearing; and (2) an act or omission committed by a student through a third party.

1720-04-03-.05 FUNDAMENTAL RIGHTS.

(1) Rights of the Respondent. The following summarizes the rights granted to a Respondent in the student conduct process:

(a) Right to be assisted by an Advisor during all stages of the student conduct process, in accordance with Section .05(3);

(b) Right to an opportunity for an Educational Conference, in accordance with Section .06(6);

(c) Right to resolve allegations of misconduct and/or sanctions through a Formal Hearing, in accordance with Section .07(2);

(d) Right to receive notice of meetings and hearings at which the Respondent may be present and receive access to records used during those meetings and hearings, as provided in the Code;

(e) Right to the presumption of innocence (i.e., the Conduct Officer bears the burden of presenting information demonstrating that it is more likely than not that the Respondent violated a Standard of Conduct, as alleged in the Notice of Allegations);

(f) Right to not be directly questioned in a hearing by anyone other than the Student Life Hearing Officer or the Chairperson of the Student Conduct Board ("SCB");

(g) Right to challenge the fairness and/or impartiality of a Student Life Hearing Officer, a member of the SCB, or a member of the Appellate Board;

(h) Right to have a SCB Hearing conducted in accordance with Section .08, including, without limitation, the right to present information to the SCB, the right to propose questions for the Chairperson to ask witnesses, the right to request that information be excluded from the SCB's consideration, and the right to make a closing statement;

(i) Right to refrain from presenting information and witnesses during a hearing before the Student Life Hearing Officer or the SCB, and the right to not have the Student Life Hearing Officer or SCB draw an inference adverse to the Respondent if the Respondent chooses not to present information or witnesses;

(j) Right to Notice of Decision of the SCB, in accordance with Section .08(5);

(k) Right to appeal the decisions of the SCB that are contained in the Notice of Decision, in accordance with Section .08(6);

(l) Right to receive a copy of a notice of an initial, interim, or final decision, or a change in such a decision, issued by the Vice Chancellor for Student Life, SCCS, a Student Life Hearing Officer, the SCB, and/or the Appellate Board (e.g., Notice of Allegations, Notice of Decision, Notice of Final Decision), simultaneously with the Complainant's receipt of a copy of the notice of the decision; and

(m) Right to appeal a decision issued by SCCS, a Student Life Hearing Officer, and/or the SCB, and receive a notice containing information about the right to appeal simultaneously with the Complainant's receipt of a notice of such information, in accordance with Section .07 and Section .08.

(2) Rights of the Complainant.

(a) A Complainant shall be granted equivalent rights to the rights granted to a Respondent under the Code including, without limitation:

1. Right to meet with SCCS to ask questions and receive information about the student conduct process, including, without limitation, the status of an investigation;

2. Right to receive notice of meetings and hearings at which the Complainant may be present and receive access to records used during those meetings and hearings, as provided in the Code;

3. Right to be assisted by an Advisor during all stages of the student conduct process, in accordance with Section .05(3);

4. Right to present information and witnesses during meetings and hearings, including, without limitation, investigations, or hearings before a Student Life Hearing Officer, and SCB Hearings;

5. Right to not be directly questioned in a hearing by anyone other than the Student Life Hearing Officer or the Chairperson of the Student Conduct Board ("SCB");

6. Right to challenge the fairness and/or impartiality of a Student Life Hearing Officer, a member of the SCB, or a member of the Appellate Board;

7. Right to receive a copy of a notice of an initial, interim, or final decision, or a change in such a decision, issued by the Vice Chancellor for Student Life, SCCS, a Student Life Hearing Officer, the SCB, and/or the Appellate Board (e.g., Notice of Allegations, Notice of Decision, Notice of Final Decision), simultaneously with the Respondent's receipt of a copy of the notice of the decision;

8. Right to appeal a decision issued by SCCS, a Student Life Hearing Officer, and/or the SCB, and receive a notice containing information about the right to appeal simultaneously with the Complainant's receipt of a notice of such information, in accordance with Section .07 and Section .08; and/or

9. Right to otherwise participate in the student conduct process.

(b) Notwithstanding any provision of the Code to the contrary, including, without limitation, this Section .05(2), a Complainant shall not have the right to attend a meeting or hearing, receive information concerning, or otherwise participate in the student conduct process if such attendance, receipt of information, or participation would violate state or federal law.

(3) Right to an Advisor. The Complainant and the Respondent may choose to be assisted by one (1) Advisor during all stages of the student conduct process.

(a) Selection of an Advisor. SCCS encourages a Complainant or a Respondent who chooses to be assisted by an Advisor to consider selecting a University employee who has received training from SCCS about the student conduct process. The Complainant and the Respondent may obtain the names of trained advisors from SCCS. At their own expense, the Complainant and the Respondent may choose a person who is not employed by the University to serve as an Advisor (e.g., friend, attorney). The Complainant and the Respondent should select as an Advisor a person whose schedule allows attendance at the scheduled date, time, and place for meetings and hearings scheduled by SCCS because meeting and hearing delays generally will not be granted due to the scheduling conflicts of an Advisor.

(b) Role of an Advisor. The role of an Advisor is limited to assisting, advising, and/or supporting a Complainant or Respondent during the student conduct process. An Advisor is not permitted to speak for or on behalf of a Complainant or Respondent, appear in lieu of a Complainant or Respondent, participate as a witness, or participate directly in any other manner during any phase of the student conduct process, including without limitation, a SCB Hearing. However, in a UAPA Hearing, the Complainant and the Respondent are entitled to have an attorney advocate on their behalf.

(4) Notification of the Right to Have an Advisor. SCCS shall provide written notice to the Complainant and the Respondent of their rights to an Advisor. The notice shall contain an explanation of the role of an Advisor during the student conduct process.

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

(1) Receipt and Review of Allegations of Misconduct. SCCS may initiate the student conduct process on the basis of written allegations received from any source, including, without limitation, a student, a faculty member, a University housing employee, or a law enforcement agency. SCCS also may initiate the student conduct process in the absence of written allegations if SCCS becomes aware, through other means, of potential misconduct committed by a student. Upon receipt of written allegations or other information concerning potential student misconduct, SCCS will review the information and determine whether to initiate the student conduct process. SCCS's determination of whether to initiate the student conduct process generally will be based on: the preliminary investigation by SCCS or other University official(s), if any, into the allegations received by SCCS; SCCS's determination of whether the alleged conduct falls within the jurisdiction of the Code; and SCCS's determination of whether the alleged conduct, if true, violated the Standards of Conduct.

(2) Investigation of Allegations of Misconduct. SCCS may investigate the allegations against the Respondent by interviewing witnesses and obtaining other information. SCCS is not obligated to interview a witness identified by the Respondent or the Complainant if SCCS believes the witness is not likely to possess relevant information, is not likely to lead SCCS to the discovery of relevant information, or the information the witness is likely to possess is cumulative of other information gathered by SCCS. SCCS may re-interview the Complainant, the Respondent, and/or any other person at any time during the investigation in order to obtain additional and/or clarifying information. Investigations conducted by SCCS will be prompt, thorough, and equitable. In conducting an investigation, SCCS will act as a fair and impartial party rather than a representative of the person, office, unit, organization, or entity that submitted the allegations to SCCS. Parts of SCCS's investigation may occur before, during, and/or after the Educational Conference (Section .06(6)) and/or any other part of the student conduct process. At the conclusion of its investigation, SCCS may prepare a written report of the findings of the investigation. The report may include an assessment of the credibility of persons interviewed during the investigation and an assessment of whether it is more likely than not that the Respondent violated the Standards of Conduct. SCCS may delegate the investigation of certain types of allegations to other University offices in accordance with University policy (e.g., research misconduct; sexual misconduct, relationship violence, stalking, and retaliation).

(3) ~~Fairness and Impartiality~~Conflicts of Interest.

(a) The student conduct process must be carried out in a manner that is free from conflicts of interest consistent with due process of law.

(b) A University employee shall not act on behalf of SCCS in the student conduct process in any case in which: (1) the employee is a Complainant or a witness; or (2) the employee determines, for any other reason (e.g., personal prejudice or bias), that he/she cannot be fair or impartial.

(c) In cases involving allegations of sexual assault, dating violence, domestic violence, or stalking, the student conduct process must include protections for the Respondent analogous to, and no less protective than, the conflict of interest provisions of Tennessee Code Annotated § 4-5-303. Notwithstanding the preceding sentence: (1) an attorney for the University is allowed to provide legal advice to multiple University employees who serve in different roles in the

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

~~(3)~~(4) Interim Administrative Actions.

(a) General. In certain situations, the University may impose interim administrative actions prior to the conclusion of the student conduct process. The University shall determine the appropriate interim administrative actions based on the totality of the circumstances. Examples of interim administrative actions include, without limitation, a no-contact directive (Section .06(4)(b)), a disciplinary hold (Section .06(4)(c)), and interim restrictions (Section .06(4)(d)).

(b) No-Contact Directive. In cases involving allegations of assault, injury, sexual misconduct, relationship violence, stalking, retaliation or in other cases where there is reason to believe continued contact between a student and specific persons may interfere with those persons' security, safety or ability to participate effectively in work or studies, the University may issue a written instruction to a student, called a no-contact directive, that prohibits a student from having verbal, physical, written, and/or electronic contact with specific other persons for a definite or indefinite period of time. A no-contact directive also may prohibit a student from being present on designated University-controlled property. Any student, faculty or staff member or other person with a reasonable justification may request that a no-contact directive be issued to a student.

(c) Disciplinary Hold. The Respondent's academic record (including, without limitation, the release of the Respondent's official or unofficial transcript), degree, ability to register for classes, and/or ability to re-enroll may be placed on disciplinary hold by SCCS or by another appropriate University office at the request of SCCS for the following reasons: (1) to require the Respondent to participate in the student conduct process (SCCS will release the hold after the Respondent attends the Educational Conference but may reinitiate the hold in order to require the Respondent to participate in other parts of the student conduct process); or (2) to require the Respondent to satisfy the terms and conditions of disciplinary sanctions received (the hold shall be released after the terms and conditions have been satisfied). No diploma shall be given and no grades, academic credit, or degree shall be awarded to a student who has been placed on disciplinary hold.

(d) Interim Restrictions. Generally, the status of a student alleged to have violated the Standards of Conduct is not affected until the conclusion of the student conduct process (Section .07(4)). However, the Vice Chancellor for Student Life may impose interim restrictions prior to the conclusion of the student conduct process related to the alleged misconduct when the Vice Chancellor for Student Life has reasonable cause to believe that (1) a Respondent's continued presence on University-controlled property or at University-affiliated activities poses a significant risk of substantial harm to the health, safety, or welfare of others or to property or (2) poses an imminent or ongoing threat to the disruption of, or interference with, the normal operations of the University. Interim restrictions shall be confirmed by notice to the Respondent that explains the basis for the interim restrictions and shall remain in effect until the conclusion of the student conduct process, which should be completed without undue delay. Within three (3) days of the imposition of the interim restrictions, the Respondent shall be

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

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

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

(a) Scope of the Educational Conference. The Educational Conference is a meeting between SCCS and the Respondent in which the following generally occurs:

1. SCCS orally informs the Respondent about the allegations made against the Respondent and, if requested by the Respondent, provides the Respondent with a reasonable opportunity to review the written allegations, if any, received by SCCS.

2. SCCS provides the Respondent with an opportunity to respond to the allegations, including, without limitation, an opportunity to present information to SCCS concerning the allegations and identify witnesses whom the Respondent believes SCCS should interview to obtain additional information.

3. Both SCCS and the Respondent may ask questions to each other and seek clarifying information about the allegations, the possible sanction(s), and the student conduct process.

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

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

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

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

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

(1) Resolution by Agreement.

(a) Purpose and Effects of a Resolution Agreement. At any time during the student conduct process, a Respondent may resolve allegations of misconduct by signing a Resolution Agreement proposed by SCCS. By signing a Resolution Agreement, the Respondent: (1) accepts responsibility for violating the Standards of Conduct~~, as alleged by SCCS~~; (2) agrees to the imposition of the sanction(s) ~~proposed by SCCS~~; and (3) waives all rights the Respondent may have to resolve the allegations through a Formal Hearing. A Resolution Agreement is not valid until it is signed by both the Respondent and SCCS.

(b) Revocation or Appeal of a Resolution Agreement. The Respondent may not revoke or appeal a Resolution Agreement signed by the Respondent.

(c) Resolution Agreement - Sexual Misconduct, Relationship Violence, Stalking, or Retaliation. ~~After SCCS receives a Resolution Agreement signed by the Respondent ~~In a case involving sexual misconduct, relationship violence, stalking, or retaliation, SCCS will notify the Complainant about the proposed Resolution Agreement in writing and provide the Complainant with the opportunity to object to the ~~sanction~~ proposed ~~by SCCS in the~~ Resolution Agreement. A Complainant must notify SCCS of his/her objection in writing within five (5) business days from the date that SCCS informs the Complainant about the proposed Resolution Agreement. If the Complainant timely informs SCCS of his/her objection, then SCCS may address the Complainant's objection by modifying the ~~sanction in a way~~proposed Resolution Agreement that is agreeable to both the Respondent and the Complainant and having the Respondent sign the modified Resolution Agreement. Otherwise, SCCS will continue the student conduct process and resolve the allegations against the Respondent in accordance with the Code. ~~Nothing in this Section .07(1) shall be construed to permit SCCS to conduct mediation in a case involving allegations of sexual assault.~~

(d) Resolution Agreement – Academic Dishonesty. In order to resolve an allegation that the Respondent violated Section .04(1) (academic dishonesty) through a Resolution Agreement, the Respondent shall agree to the imposition of the instructor's academic penalty in addition to agreeing to the other requirements contained in Section .07(1)(a).

(2) Resolution by Formal Hearing.

(a) Types of Formal Hearings. A Formal Hearing is a process through which a Respondent has a right to contest allegations of misconduct and/or the sanctions proposed by SCCS by presenting information (including, without limitation, witnesses) to a decision maker other than the University employee(s) who conducted the investigation and/or Educational Conference. The Code provides for three types of Formal Hearings, depending on the gravity of the disciplinary sanctions that have been proposed by SCCS:

1. A hearing before a Student Life Hearing Officer, which is described in Section .07(2)(d);

2. A hearing before the SCB ("SCB Hearing"), which is described in Section .08; and

3. A contested case hearing under the Uniform Administrative Procedures Act ("UAPA Hearing"), which is conducted in accordance with the University's procedures for conducting contested case proceedings under the UAPA, Chapter 1720-01-05.

(b) Rights to a Formal Hearing. In every case, the Respondent has the right to resolve allegations of misconduct and/or proposed sanctions through a hearing before a Student Life Hearing Officer. A Respondent also has the right to resolve allegations of misconduct and/or the proposed sanctions through a SCB Hearing or a UAPA Hearing when SCCS proposes one (1) or more of the following sanctions: (1) deferred suspension; (2) suspension; (3) expulsion; (4) University housing removal; (5) withholding of degree; (6) revocation of degree; or (7) revocation or suspension of the student organization's University registration.

(c) How to Request a Formal Hearing. A Formal Hearing may be requested by the Respondent only in writing using the form(s) approved by SCCS. Orally requesting a Formal Hearing shall not constitute a valid request for a Formal Hearing. If a Respondent timely requests a Formal Hearing and has a right to have either a UAPA Hearing or a SCB Hearing, then the University will conduct a UAPA Hearing unless the Respondent executes a written waiver of the right to a UAPA Hearing.

(d) Hearing before a Student Life Hearing Officer. A Student Life Hearing Officer is a University employee designated and trained by SCCS to conduct a Formal Hearing consistently with the procedures outlined in the Code for SCB Hearings (e.g., Section .08), except as provided in this Section .07(2)(d). In conducting a Formal Hearing, a Student Life Hearing Officer has the same authority of the Chairperson of the SCB except that, unlike the Chairperson of the SCB, but like the voting members of the SCB, the Student Life Hearing Officer is the decision maker concerning whether the Respondent violated the Standards of Conduct, and, if so, what sanction(s) to impose. The decision of a Student Life Hearing Officer may be appealed to the Appellate Board using procedures consistent with the procedures outlined in the Code for appeals of decisions of the SCB.

(e) Consequences of Failing to Timely Elect a Formal Hearing. If the Respondent fails to elect a Formal Hearing within five (5) business days of SCCS transmitting a Notice of Allegations in writing to the Respondent, then the Respondent waives all rights to a Formal Hearing, and SCCS has the discretion to deem the Respondent to have accepted SCCS's determination of responsibility for misconduct and may impose sanction(s) deemed appropriate by SCCS (unless SCCS extends the time for the Respondent to request a Formal Hearing for good cause). If SCCS extends the time for the Respondent to request a Formal Hearing and the Respondent fails to elect a Formal Hearing within the additional time granted by SCCS, then the Respondent waives all rights to a Formal Hearing, and SCCS has the discretion to deem the Respondent to have accepted SCCS's determination of responsibility for misconduct and may impose sanction(s) deemed appropriate by SCCS.

(3) ~~Resolution through an~~ Alternative Resolution ~~Process~~.

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

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

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

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

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

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

(b) Failure to Attend or Schedule an Educational Conference. In accordance with Section .06(6)(c), the student conduct process concludes when: SCCS has issued a Notice of Educational Conference; the Respondent either fails to attend an Educational Conference or fails to comply with SCCS's instruction to contact SCCS to schedule an Educational Conference within the time frame designated in the Notice of Inquiry; and SCCS does not exercise its discretion to excuse the Respondent's failure for good cause.

(c) Failure to Request a Formal Hearing after Notice of Allegations. In accordance with Section .07(2)(e), the student conduct process concludes when the Respondent fails to elect a Formal Hearing within five (5) business days of SCCS sending or delivering a Notice of Allegations to the Respondent, and SCCS does not exercise its discretion to excuse the Respondent's failure for good cause.

(d) Resolution Agreement. The student conduct process concludes when a Resolution Agreement is executed in accordance with Section .07(1).

(e) Alternative Resolution Agreement. The student conduct process concludes when an Alternative Resolution Agreement is executed in accordance with Section .07(3).

(f) Notice of Decision of a Student Life Hearing Officer – No Valid Appeal. The student conduct process concludes when a Student Life Hearing Officer has issued a Notice of Decision and neither the Respondent nor the Complainant has submitted a valid Notice of Appeal.

(g) Notice of Decision of a Student Conduct Board – No Valid Appeal. The student conduct process concludes when a Student Conduct Board has issued and transmitted a Notice of Decision under Section .08(5) and neither the Respondent nor the Complainant has submitted a valid Notice of Appeal under Section .08(6).

(h) Notice of Final Decision. The student conduct process concludes when the Appellate Board has issued a Notice of Final Decision.

(i) UAPA. The student conduct process concludes when a Formal Hearing has concluded, either through a final order, settlement, or otherwise, under the University's rules for conducting contested case proceedings under the UAPA, Chapter 1720-01-05.

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

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

(1) Notice of SCB Hearing.

(a) When a Notice of SCB Hearing is Sent. If the Respondent requests a SCB Hearing in accordance with Section .07(2), then SCCS will send the Respondent and the Complainant a Notice of SCB Hearing at least seven (7) business days in advance of the date of the hearing.

(b) Information in the Notice of SCB Hearing. The Notice of SCB Hearing generally will contain, or be accompanied by, the following information: (1) the date, time, and place of the SCB Hearing (SCCS may reschedule the SCB Hearing for good cause and issue a revised Notice of SCB Hearing that contains a new date, time, and place of the SCB Hearing); (2) a copy of the Notice of Allegations; (3) the sanction(s) that the Conduct Officer will request the SCB impose on the Respondent; (4) the names of all witnesses through whom the Conduct Officer is likely to present information during the SCB Hearing; (5) a notice of the right to the assistance and/or support of an Advisor during the SCB Hearing; and (6) a description of all tangible or electronic information that the Conduct Officer is likely to present to the SCB, such as an investigative report, police report, incident report, witness statements, video or audio recordings, photographs, text messages, or phone records ; (7) notice of the right to request a copy of SCCS' investigative file, redacted in accordance with the Family Educational Rights and Privacy Act of 1974, (20 U.S.C. § 1232g), and the federal regulations implementing that statute, as amended; and (8) notice of the right to request copies of all documents, copies of all electronically stored information, and access to tangible evidence that the University has in its possession, custody, or control and may use to support claims or defenses, unless the use would be solely for impeachment.

(c) More than One Respondent. In cases involving more than one (1) Respondent, SCB Hearings concerning each Respondent's conduct may be conducted separately upon written request of a Respondent submitted at the time of the Respondent's request for a Formal Hearing. SCCS has the discretion to make the final determination of whether to grant such a request and will notify the Respondents of the decision.

(d) Consequences of Failing to Attend a SCB Hearing. If the Respondent fails to attend a SCB Hearing, then the Respondent waives all rights to a SCB Hearing. The SCB may: proceed with the SCB Hearing without the Respondent's participation; hold the Respondent accountable for all decisions made in the Respondent's absence, including, without limitation, decisions concerning responsibility for alleged violations of the Standards of Conduct; and may determine that the Respondent's failure to attend the hearing constitutes a separate violation of the Standards of Conduct. If the SCB determines, in the Respondent's absence, that it is more likely than not that the Respondent

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

(2) Composition of the Student Conduct Board.

(a) Eligible Pool. The University shall annually appoint a pool of persons who are eligible to serve on a SCB. The University may appoint University students, University faculty members, or University staff employees; however, an employee who works in SCCS is ineligible to serve on a SCB. Persons appointed by the University will be trained by SCCS to serve on a SCB.

(b) Appointment of the SCB.

1. General. The SCB is appointed ad hoc for each hearing by the Director of SCCS from the pool described in Section .08(2)(a). SCCS shall appoint a SCB consisting of one (1) non-voting Chairperson and seven (7) voting members. SCCS shall not appoint persons on the basis of how SCCS anticipates that they will vote. The Chairperson shall be a University faculty member or staff employee who has received training from SCCS on how to conduct a SCB Hearing. Five (5) voting members and one (1) non-voting Chairperson constitute a quorum of the SCB that was appointed by SCCS; however, SCCS will make reasonable efforts to seat a SCB consisting of seven (7) voting members. In seating any SCB, except as provided in Section .08(2)(b)(2) or Section .08(2)(b)(3), the student composition of the voting members of the SCB must be equal to or greater than the sum of the faculty and staff voting members. Regardless of the number of voting members present, all classifications of the University community (students, faculty, and staff) must be represented by at least one (1) voting member, except as provided in Section .08(2)(b)(2) or Section .08(2)(b)(3).

2. Exception for Cases Involving Allegations of Sexual Misconduct. Notwithstanding anything to the contrary in Section .08(2)(b)(a), SCCS shall not appoint students to serve on the SCB in a case involving an allegation of sexual misconduct unless both the Respondent and the Complainant consent to having students appointed to serve on the SCB hearing their case.

3. Exception for Cases Involving Allegations of Research Misconduct. Notwithstanding anything to the contrary in Section .08(2)(b)(a), SCCS shall not appoint students to serve on the SCB in a case involving an allegation of research misconduct.

(c) Fairness and Impartiality of SCB Members. Any member of the SCB who determines that they cannot decide a case fairly and impartially for any reason (e.g., having a personal prejudice or bias) shall excuse themselves from serving on the SCB, in which case SCCS shall appoint a substitute member of the panel in accordance with the rules in Section .08(2)(b).

(3) General Rules Governing SCB Hearings.

(a) Required Pre-Hearing Information and Copies – Complainant and Respondent.

1. At least five (5) business days prior to the SCB Hearing, the Complainant and the Respondent must provide the following to SCCS in writing:

   (i) The name of their Advisor, if any, who will attend the SCB Hearing;

   (ii) The names of all witnesses through whom they plan to present information to the SCB and a brief summary of the information that they reasonably anticipate that each witness will provide to the SCB;

   (iii) A copy of all tangible or electronic information that they plan to present to the SCB (e.g., witness statements, video or audio recordings, photographs, text messages, phone records, medical bills, diagrams). However, they are not required to provide copies of information that is not in a form that allows copying (e.g., weapon; piece of clothing), in which case they should describe the information in writing; and

   (iv) A copy of a statement, if any, that they want the SCB to consider in determining the appropriate sanction to impose on the Respondent if the SCB finds that the Respondent violated a Standard of Conduct. The Complainant's statement may include a description of the impact of the Respondent's alleged conduct on the Complainant. The Respondent's statement may include a description of any factors the Respondent believes mitigates the alleged misconduct.

2. During the SCB Hearing, the Complainant and the Respondent may present witnesses who were not identified in the Notice of Formal Hearing only if they comply with this Section .08(3)(a) (i.e., other witnesses not identified to SCCS in writing at least five (5) business days prior to the SCB Hearing will not be allowed). The Complainant and the Respondent are responsible for contacting witnesses who were not identified in the Notice of Formal Hearing, informing them about the date, time, and place of the SCB Hearing, and securing their attendance at the SCB Hearing.

(b) Pre-Hearing Review of Information. Individuals involved with the hearing are responsible for contacting SCCS to arrange a time to review the information prior to the hearing if such review is desired and the information has not been made available electronically. No less than three (3) business days prior to the hearing, SCCS will make copies of information submitted by the Complainant, the Respondent, and the Conduct Officer available for review by the Complainant, Respondent, their respective Advisors, and members of the SCB. Those individuals will be notified by SCCS when materials are available for review. SCCS may make the information available electronically. In their sole discretion, SCCS may redact irrelevant information prior to making information available.

(c) Recording of the SCB Hearing. The University shall be responsible for making a verbatim record (e.g., digital recording) of a SCB Hearing. Deliberations of the SCB shall not be recorded. The record of the SCB Hearing shall be the property

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

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

(4) Procedural Rules for SCB Hearings.

(a) Right to Challenge the Selection of a SCB Member. At the beginning of the SCB Hearing, the Chairperson shall allow the Complainant and the Respondent to request the removal of a member of the SCB on the grounds that the person cannot be fair and impartial in deciding the case. If the Chairperson determines that the person cannot be fair and impartial, then SCCS may appoint a substitute member of the SCB in accordance with Section .08(2)(b) or, if a quorum of the SCB still exists, remove the SCB member and allow the SCB Hearing to continue without appointing a substitute member.

(b) Authority of the Chairperson. The Chairperson has the authority to maintain order and make all decisions necessary for the fair, orderly, and expeditious conduct of the SCB Hearing. The Chairperson shall be the final decision maker concerning what, how, and in what order information and witnesses are presented to the SCB.

(c) Exclusion of Information. Upon the Chairperson's initiation or upon request by the Conduct Officer, the Complainant, the Respondent, or a member of the SCB, the Chairperson may exclude the following information from the SCB's consideration:

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

(d) Persons Who May Present Information. The only persons who may present information and/or witnesses during a SCB Hearing are the Conduct Officer, the Complainant, and the Respondent. The Complainant and the Respondent are responsible for presenting their own information and/or witnesses, if any, to the SCB (an Advisor shall not present information and/or witnesses to the SCB).

(e) Formal Rules. Formal rules of process, procedure, and/or technical rules of evidence, such as those applied in criminal or civil court, are not used in SCB Hearings. The Chairperson shall decide all procedural questions that arise during a SCB Hearing. The Chairperson may consult with SCCS for assistance in resolving procedural questions fairly and in accordance with the Code.

(f) Questioning of Witnesses. Witnesses will provide information to the SCB and answer questions from the Chairperson. The Chairperson may ask questions and/or submit a request for additional information to the Respondent, the Complainant, the Conduct Officer, and/or witnesses. The Conduct Officer, the Respondent and/or the Complainant shall not directly ask questions to each other or other witnesses. The Conduct Officer, the Respondent, the Complainant, and/or members of the SCB may propose questions for the Chairperson to ask witnesses by submitting the proposed questions to the Chairperson in writing during the hearing. The Chairperson has the discretion whether to ask a witness a question proposed by the Conduct Officer, the Respondent, the Complainant, and/or members of the SCB. The method of questioning witnesses outlined in this Section .08(4)(f) is used to preserve the educational tone of the SCB Hearing and to avoid the creation of an adversarial environment.

(g) Closing Statements. At the close of the SCB Hearing, the Chairperson may allow the Conduct Officer, the Complainant, and the Respondent equal opportunities to make statements to the SCB summarizing the information presented to the SCB and/or advocating the decision that the SCB should reach. The Conduct Officer and the Complainant may advocate that the SCB impose a specific sanction(s), and the Respondent may respond; however, the Respondent's record of student

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

(h) Burden of Presenting Information Demonstrating Misconduct. The Conduct Officer bears the burden of presenting information demonstrating that it is more likely than not that the Respondent violated a Standard of Conduct, as alleged in the Notice of Allegations. Neither the Complainant nor the Respondent is required to present information or witnesses concerning the Respondent's alleged misconduct. The SCB shall not draw an inference adverse to the Conduct Officer, the Complainant, or the Respondent if the Complainant or the Respondent chooses not to present information or witnesses to the SCB.

(5) Notice of Decision of the Student Conduct Board.

(a) Deliberation of the SCB. After the Chairperson determines that all relevant information has been received by the SCB, the SCB will deliberate in private and decide, for each Standard of Conduct alleged in the Notice of Allegations to have been violated, whether it is more likely than not that the Respondent violated the Standard of Conduct. The SCB will decide by majority vote whether the Respondent violated the Standards of Conduct. The Chairperson shall not vote on the decision of whether the Respondent is responsible for violating the Standards of Conduct or what sanctions should be imposed unless there is a tie vote of the SCB.

(b) Basis of Decision. The SCB shall not base its decision on information not presented during the SCB Hearing. However, if the SCB requests that additional information be provided after the SCB Hearing, the SCB may consider and base its decision on the additional information, as long as the Conduct Officer, the Respondent, and the Complainant have had a chance to review and respond to the additional information either in a resumption of the SCB Hearing or in writing.

(c) Determination of Sanction(s). If the SCB decides that the Respondent violated the Standards of Conduct, then the SCB will decide the appropriate sanction(s) by majority vote. In deciding the appropriate sanctions for a Respondent's misconduct, the SCB may consider: (1) statements submitted by the Complainant and/or the Respondent to the SCB concerning the appropriate sanctions; and (2) a statement about the Respondent's conduct history, which shall be provided to the Chairperson by SCCS in a sealed envelope prior to the SCB Hearing.

(d) Issuance of Notice of Decision. Issuance of Notice of Decision. Within three (3) business days of the conclusion of the SCB Hearing, the Chairperson shall issue a Notice of Decision and transmit a copy of the Notice of Decision to SCCS. SCCS shall notify the Respondent about the Notice of Decision and provide a copy of the Notice of Decision. If permitted or required under law, SCCS shall notify the Complainant about the Notice of Decision (simultaneously with the notification to the Respondent) and provide a copy of the Notice of Decision to the Complainant.

(e) Information in Notice of Decision. The following information shall be included in the Notice of Decision: (1) for each Standard of Conduct identified in the Notice of Allegations, the SCB's decision concerning whether it is more likely than not

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

(6) Appealing Decisions of the Student Conduct Board.

(a) Appealable Decisions. The Conduct Officer, the Complainant and/or the Respondent may appeal the decisions of the SCB that are contained in the Notice of Decision, but the grounds for appeal are limited to those described in Section .08(6)(c).

(b) Notice of Appeal. An appeal is procedurally valid only if all of the following requirements are met: (1) an appeal shall be submitted in writing by fully completing a form approved by SCCS called a "Notice of Appeal;" (2) the Notice of Appeal shall be received by SCCS within five (5) business days of the date that SCCS transmitted the Notice of Decision; and (3) the Notice of Appeal shall not include information that is not included in the record of the SCB Hearing, except the Notice of Appeal may contain a summary of the new information described in Section .08(6)(c)(3).

(c) Grounds for Appeal. The Notice of Appeal shall explain the grounds for the appeal, which shall be limited to one (1) or more of the following grounds:

1. Clearly Unreasonable Sanction. The sanction(s) imposed by the SCB is clearly unreasonable (i.e., has no sound basis or justification in reason).

2. Material Procedural Error. A procedural error occurred prior to or during the SCB Hearing, and the procedural error reasonably could have had a material impact on the SCB in reaching its decision. Neither the failure of the Respondent or the Complainant to secure the attendance of an Advisor or witness nor the failure of an Advisor or witness to attend or otherwise participate in any phase of the student conduct process constitutes a material procedural error. The failure of the Respondent or the Complainant to attend the SCB Hearing does not constitute a material procedural error.

3. New Information. New information has been discovered, the information reasonably could have had a substantial impact on the SCB in reaching its decision, and the person submitting the Notice of Appeal did not know and reasonably could not have known about the information at the time of the SCB Hearing.

4. Personal Prejudice or Bias of a SCB Member. A SCB member had a personal prejudice or bias that precluded them from fairly and impartially hearing the case. The fact that a SCB member voted to find a Respondent responsible or not responsible for violating a Standard of Conduct does not, by itself, demonstrate that the SCB member had a personal prejudice or bias for or against the Respondent, the Complainant, or the University.

(d) Effective Date of Sanction. The sanction(s) imposed by the SCB shall not be effective during the period in which a Notice of Appeal may be submitted, or, if a procedurally valid Notice of Appeal has been submitted (as determined by Section .08(6)(b)), until a Notice of Final Decision is issued by the Appellate Board, whichever is later. In cases in which the sanction of degree revocation is imposed, the sanction shall be presented to the Chancellor for approval before the sanction is imposed.

(e) Appellate Board. The Appellate Board is the University body that considers appeals of decisions of the SCB, after a procedurally valid Notice of Appeal has been submitted to SCCS. SCCS will appoint a pool of persons trained by SCCS who are eligible to serve on an Appellate Board. SCCS may appoint University students, University faculty members, or University staff employees to be members of that pool. SCCS shall not appoint persons on the basis of how SCCS anticipates that they will vote.

(f) Determination of Procedural Validity of Notice of Appeal. Within five (5) business days after the receipt of a Notice of Appeal, SCCS will determine whether the Notice of Appeal is procedurally valid. A Notice of Appeal is procedurally valid only if it has been fully completed, timely submitted to SCCS, does not contain information outside of the record of the SCB Hearing, and does not contain a ground for appeal not listed in Section .08(6)(c). If a Notice of Appeal is procedurally invalid and the time for submitting a Notice of Appeal under this Section .08(6)(f) has expired, then SCCS shall send the Conduct Officer, the Respondent, and the Complainant (if permitted or required by law) a notice that the decision of the SCB has become final and any sanction(s) imposed will become effective immediately. However, in a case in which the Notice of Appeal contains information outside of the record of the SCB Hearing or a ground for appeal not listed in Section .08(6)(c), SCCS may proceed with appointing an Appellate Board after removing from the Notice of Appeal information that was not included in the record of the SCB Hearing and/or the impermissible ground for appeal.

(g) Appointment of Appellate Board. If the Notice of Appeal is procedurally valid, then SCCS shall appoint an Appellate Board to hear the appeal from the pool of persons who are eligible to serve on an Appellate Board. An Appellate Board shall be composed of one (1) non-voting Chairperson and three (3) voting members. At least one (1) voting member of the Appellate Board shall be a University student; except, however, SCCS shall not appoint students to serve on an Appellate Board in a case involving an allegation of research misconduct or involving an allegation of sexual misconduct unless both the Respondent and the Complainant consent to having students appointed to serve on the Appellate Board hearing their case. The Director of SCCS shall not appoint a person to serve as Chairperson or a voting member of the Appellate Board if the person served as a Chairperson or a voting member of the SCB whose decision is being appealed. In addition, an employee who works in SCCS or whose direct supervisor is the Conduct Officer who participated in the SCB Hearing shall be ineligible to serve as a member of the Appellate Board.

(h) Transmittal of Notice of Appeal. After the appointment of the members of the Appellate Board, SCCS shall transmit a copy of the Notice of Appeal to persons who have a need to know about the Notice of Appeal, including, without limitation, the members of the Appellate Board and all non-appealing parties

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

(i) Recusal. Any member of the Appellate Board who determines that they cannot decide the appeal fairly and impartially for any reason shall recuse themselves from serving on the Appellate Board, in which case SCCS shall appoint a substitute member of the Appellate Board in accordance with this Section .08(6)(g).

(j) Review of the Record. The Appellate Board's final decision shall be based on its review of the record of the hearing before the SCB, which shall be limited to: (1) the Notice of Allegations; (2) the Notice of Formal Hearing; (3) the Notice of Decision; (4) the recording and the transcript, if any, of the hearing, and all other information submitted to the SCB during the hearing; and (5) the Notice of Appeal and any written responses, in accordance with Section .08(6)(h).

(k) Potential Decisions of the Appellate Board. The Appellate Board shall reach one (1) of the following decisions, by a majority vote, if the appeal is determined to be procedurally valid:

1. Affirm both the SCB's finding that the Respondent violated the Standards of Conduct and the sanctions imposed by the SCB;

2. In a case involving a clearly unreasonable sanction, the Appellate Board may modify the sanctions imposed by the SCB by imposing a greater or lesser sanction(s);

3. In a case involving a material procedural error, the Appellate Board shall remand the case for a new hearing to be conducted by a new SCB or the same SCB. The Appellate Board should recommend to the Chairperson how to correct the procedural error. SCCS may appoint a substitute member for any member of the SCB who is unavailable to participate in the new hearing; or

4. In a case of new information that fits the criteria described in Section .08(6)(c)(3), remand the case to the same SCB for the limited purpose of hearing the new information and reconsidering its decision based on the new information. SCCS may appoint a substitute member for any member of the SCB who is unavailable to participate in hearing the new information or the reconsideration of the decision.

5. In a case in which a SCB member had a personal prejudice or bias, remand the case for a new hearing to be conducted by a new SCB.

(l) Notice of Final Decision. The Appellate Board shall communicate its decision through a written notice called a Notice of Final Decision. The Notice of Final Decision should be issued within ten (10) business days of the submission of the Notice of Appeal. The Notice of Final Decision shall be sent to SCCS, who will notify the Conduct Officer, the Respondent, the Chairperson of the SCB, and, if permitted or required by law, the Complainant about the Notice of Decision and provide them with a copy of the Notice of Decision. The decision of the Appellate Board is final and is not subject to appeal.

(7) Other Issues Heard by the SCB. In addition to hearing disputes concerning violations of the Standards of Conduct, the Student Conduct Board shall also be the University body that hears disputes concerning the interpretation of the Student Government Constitution and disputes concerning the results of Student Government elections.

1720-04-03-.09 SANCTIONS.

(1) General Rules.

(a) Purposes of Sanctions. The purposes of sanctions include, without limitation: (1) to educate the Respondent about appropriate conduct; (2) to promote the personal and professional development of the Respondent; (3) to discourage the Respondent and other students from violating the Standards of Conduct; and (4) to protect other members of the University community. The sanctions imposed on a Respondent should be proportional to the Respondent's misconduct and appropriate for the particular case based on the gravity of the offense (including, without limitation, how the violation affected or reasonably could have affected other members of the University community). Consideration may also be given to the Respondent's conduct record; whether the Respondent acted in self-defense, and, if so, whether the amount of force used was reasonable under the circumstances; the Respondent's academic classification (e.g., undergraduate, graduate, freshman, sophomore, junior, senior); and other aggravating or mitigating factors.

(b) Administrative and Developmental Sanctions. A student who accepts responsibility or is found responsible for violating the Standards of Conduct generally will be given one (1) or more administrative sanctions. A student may also be given one (1) or more developmental sanctions.

(2) Administrative Sanctions.

(a) Warning. A warning is a written notice to a student that informs the student that the student has violated the Standards of Conduct, that the misconduct must cease and/or not reoccur, and that further misconduct will likely result in the imposition of more serious sanctions.

(b) Disciplinary Probation. Disciplinary probation is imposed for a specified period of time during which the student may continue to be enrolled but must demonstrate conduct that conforms to the Standards of Conduct. Conditions may be placed on the student's continued enrollment. A student may be placed on disciplinary probation for moderate misconduct or in the case of repeated minor misconduct. Also, a student allowed to re-enroll following a suspension will be placed on disciplinary probation. Subsequent violations of the Standards of Conduct during

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

(c) Deferred Suspension. A deferred suspension is a designated period of time during which a student, while continuing to be enrolled, is given an opportunity to demonstrate the ability to abide by the Standards of Conduct. A student may be placed on deferred suspension for serious misconduct or in the case of repeated misconduct. If the student is found responsible for any additional violation(s) of the Standards of Conduct while the student is on deferred suspension, then the sanction of suspension will be the minimum sanction that will be imposed in a Formal Hearing on the subsequent misconduct. Students who are placed on deferred suspension generally also receive disciplinary probation and ~~are also generally given~~ developmental sanctions.

(d) Suspension. A suspension is an official separation of a student from the University for a specific period of time and/or until certain conditions are met. A suspension may be imposed for serious misconduct and/or for a violation of deferred suspension. Suspension may include conditions that must be satisfied prior to a student being allowed to re-enroll and/or conditions that will be in place if the student is allowed to re-enroll. The effective date of a suspension may be imposed retroactively to the date that the misconduct occurred. While suspended, the student loses all University rights and privileges (e.g., enrollment privileges), shall not represent the University in any official manner, and shall not be present on University-controlled property without the prior approval of the Vice Chancellor for Student Life. The student may be required to meet with an assigned Student Life staff member periodically while suspended to ensure the student is making satisfactory progress regarding the developmental sanctions issued. The Vice Chancellor for Student Life will determine whether the student is eligible for consideration for re-enrollment by the University's admissions office(s). Students who are permitted to return to the University following a period of suspension will automatically be placed on disciplinary probation by SCCS for a designated period of time, which is designed to facilitate a smooth transition back to the University community. A student on post-suspension disciplinary probation must abide by the Standards of Conduct and all terms and conditions placed on the student's re-enrollment.

(e) Expulsion. Expulsion is a sanction that permanently bars a person from re-enrolling as a student at the University. This sanction generally is imposed when the student's misconduct is deemed so serious as to warrant total and permanent disassociation from the University community without the possibility of re-enrollment; and/or when, by the student's repeated misconduct, a student has exhibited a blatant disregard for the health, safety, or welfare of other members of the University community or the University's right to establish rules of conduct. A person who has been expelled shall not be present on University-controlled property without the prior approval of the Vice Chancellor for Student Life.

(f) Withholding of Degree. The University may withhold a degree as a disciplinary sanction for a specified period of time or until the student's completion of all other sanctions imposed, whichever occurs later.

(g) Revocation of Degree. The sanction of the revocation of a degree may be imposed if a student has obtained a degree at least in part through cheating, plagiarism, other academic dishonesty, or through research misconduct.

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

(h) Disciplinary Probation for Student Organizations. A student organization given the sanction of disciplinary probation is permitted to retain University student organization registration on a probationary status. As a condition of the disciplinary probation, the student organization also may be given developmental sanctions.

(i) Social Probation for Student Organizations. Social probation prohibits a student organization from sponsoring or participating in specified social activities. While on social probation, a student organization may not host social events or participate in University-affiliated activities. Any exceptions to social probation must be approved, in advance, by the Vice Chancellor for Student Life.

(j) Deferred Suspension for Student Organizations. A deferred suspension is a designated period of time during which a student organization, while continuing to be active, is given an opportunity to demonstrate the ability to abide by the Standards of Conduct. A student organization may be placed on deferred suspension for serious misconduct or in the case of repeated misconduct. If the student organization is found responsible for any additional violation(s) of the Standards of Conduct while the student organization is on deferred suspension, then the sanction of revocation or suspension of University registration will be the minimum sanction that will be imposed in a Formal Hearing on the subsequent misconduct. Student organizations who are placed on deferred suspension generally also receive disciplinary probation and developmental sanctions.

~~(j)~~(k) Revocation or Suspension of University Registration. In cases of serious or repeated misconduct, a student organization's University registration may be suspended or revoked.

(3) Developmental Sanctions. In addition to an administrative sanction(s), one (1) or more of the following developmental sanctions may be imposed in an effort to foster student learning and development.

(a) Educational Activities. Educational activities are designed to educate the student about why certain conduct was inappropriate. Examples of such activities include, without limitation, offering a formal apology (in writing and/or in person); attending an educational class, training, or workshop; giving or attending a presentation; preparing and submitting a research project or paper on a designated topic; or offering a written reflection responding to a prompt given by SCCS.

(b) Restitution. Restitution is compensation for loss, damage, and/or injury incurred as a result of the student's conduct. Compensation may take the form of money, service, and/or material replacement. Restitution may be required to be made to the University, a specific individual, or a specific organization. Normally, all restitution must be paid or made within two weeks of the imposition of the sanction.

(c) Supervised Work/Service. A student may be assigned unpaid work or service that is both beneficial to the University community and/or likely to assist the student in understanding the effects of the student's conduct.

(d) Loss or Restriction of Privileges. Specified student privileges are lost or restricted. Such privileges include, without limitation, representing the University in any official manner, the use of or access to University-controlled property, University parking privileges, or participation in University-affiliated activities (e.g., extracurricular activities).

(e) University Housing Reassignment or Removal. A student may be assigned to a different residence hall or residence hall room. A student's residence hall contract also may be terminated, and the student may be prohibited from residing in University housing for a definite or indefinite period of time.

(f) Mandatory Education. A student may be required to participate in one (1) or more educational programs, classes, or workshops relating to the student's misconduct, including, without limitation, education concerning alcohol or drugs. The student may be held responsible for the payment of expenses relating to the educational program/class/workshop(s).

1720-04-03-.10 HONOR STATEMENT.

(1) Honor Statement. An essential feature of the University is a commitment to maintaining an atmosphere of intellectual integrity and academic honesty. As such the University utilizes an Honor Statement that reads, "As a student of the University, I pledge that I will neither knowingly give nor receive any inappropriate assistance in academic work, thus affirming my own personal commitment to honor and integrity."

(2) Informing Students and Faculty. The following methods will be used to inform students and faculty members about the Honor Statement: (1) the Honor Statement appears on undergraduate and graduate applications for admission, and applicants will be required to acknowledge his/her affirmation of the Honor Statement in writing; (2) information regarding the Honor Statement is included in the undergraduate and graduate catalogs, Hilltopics; (3) the Honor Statement is discussed during student orientation programs; (4) faculty members are encouraged to discuss the Honor Statement with students in entry-level English courses; (5) faculty members are encouraged to include the Honor Statement in their course syllabus; (6) implementation methods and alternatives are discussed during faculty orientation programs; and (7) the enforcement of the Honor Statement is through the Standards of Conduct (Section .04(1)) and the student conduct process.

(3) Academic Dishonesty. The Honor Statement prohibits cheating, plagiarism, and any other type of academic dishonesty.

(4) Plagiarism. Plagiarism is using the intellectual property or product of someone else without giving proper credit. The undocumented use of someone else's words or ideas in any medium of communication (unless such information is recognized as common knowledge) is a serious offense, subject to disciplinary action that may include failure in a course and/or dismissal from the University. Specific examples of plagiarism include, but are not limited to: (1) using without proper documentation (quotation marks and citation) written or spoken words, phrases, or sentences from any source; (2) summarizing without proper documentation (usually a citation) ideas from another source (unless such

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

(5) Examples of Other Types of Academic Dishonesty. Specific examples of other types of academic dishonesty include, but are not limited to: (1) providing or receiving unauthorized information during an examination or academic assignment, or the possession and/or use of unauthorized materials during an examination or academic assignment; (2) providing or receiving unauthorized assistance in connection with laboratory work, field work, scholarship, or another academic assignment; (3) falsifying, fabricating, or misrepresenting data, laboratory results, research results, citations, or other information in connection with an academic assignment; (4) serving as, or enlisting the assistance of, a substitute for a student in the taking of an examination or the performance of an academic assignment; (5) altering grades, answers, or marks in an effort to change the earned grade or credit; (6) submitting without authorization the same assignment for credit in more than one course; (7) forging the signature of another or allowing forgery by another on any class or University-related document such as a class roll or drop/add sheet; (8) gaining an objectively unfair academic advantage by failing to observe the expressed procedures or instructions relating to an exam or academic assignment; and (9) engaging in an activity that unfairly places another student at a disadvantage, such as taking, hiding, or altering resource material, or manipulating a grading system.

(6) Responsibilities Associated with the Honor Statement. All members of the University community have responsibilities associated with the Honor Statement. These responsibilities are unique to each sector of the University community. Each student is responsible for his/her own personal integrity in academic life. Each student is responsible for knowing and adhering to the terms and conditions of the Honor Statement and may acknowledge his/her adherence to the Honor Statement by writing, "Pledged," and signing on a graded class assignment or examination. Although there is no affirmative duty to report the academic dishonesty of another, each student, given the dictates of his/her own conscience, may choose to report any violation of the Honor Statement to a faculty member or to SCCS. The prevention of academic dishonesty, and the response to academic dishonesty, is the immediate responsibility of the instructor. However, students are not excused from complying with the Honor Statement because of an instructor's failure to prevent or discourage academic dishonesty.

(7) Academic Dishonesty – Resolution by the Academic Department.

(a) Notice of Academic Dishonesty and Informal Opportunity to Respond to Allegations. When an act of alleged academic dishonesty is discovered by, or brought to the attention of an instructor, the instructor shall notify the student about the alleged academic dishonesty, describe the information supporting the allegation, and give the student an informal opportunity to respond to the allegation(s) and information. The instructor may proceed with imposing an academic penalty for academic dishonesty if the student has not responded to the instructor's notice to the student concerning the alleged academic dishonesty within five (5) business days of the notice. The instructor does not have the authority under the Code to impose a sanction identified in Section .09(2) or Section .09(3). An academic penalty shall not take effect until after the deadline

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

(b) Decision Whether to Impose an Academic Penalty. After giving the student notice and an informal opportunity to respond, if the instructor concludes that the student engaged in academic dishonesty, then the instructor may impose an academic penalty of a failing or reduced grade in the academic exercise, assignment, examination, and/or course; loss of credit for the work involved; an assignment to repeat the work, to be graded on its merits; and/or an oral or written reprimand. An instructor may impose more than one (1) academic penalty. If the instructor decides to impose an academic penalty, then the instructor shall transmit a notice to the student of the allegations, information, findings, academic penalty imposed, and information on the student's options to appeal the findings and/or penalties under Section .10(7)(c). The notice should be countersigned by the department head. Copies of the notice to the student shall be submitted to SCCS, the dean or other chief administrative head of the instructor's academic unit, and, where different, the dean or other chief administrative head of the academic unit in which the student is enrolled. The instructor is not required to notify a student that a complaint has been made to SCCS.

(c) Appeals of Academic Penalties. Within five (5) business days of the transmittal of the notice to the student described in Section .10(7)(b)(2), the student may appeal the academic penalty imposed by the instructor by submitting a written Notice of Appeal of Academic Penalty to SCCS, using a form approved by SCCS. The SCB hears appeals of academic penalties. If SCCS does not issue a Notice of Allegations, then the instructor shall serve as the Conduct Officer in the SCB Hearing. The decision of the SCB, or the Appellate Board if the decision is appealed, shall be the final decision of the University concerning the academic penalty. For example, if the SCB's decision, if not appealed to the Appellate Board, is to reverse a grade of "F" for the course, then SCCS will inform the University's Registrar of the SCB's decision and request the Registrar to enter the grade for the course that the student would have received if the student had not been accused of academic dishonesty. If there is a question about what grade the student would have received if the student had not been accused of academic dishonesty, the question will be referred to the Provost for resolution.

(8) Academic Dishonesty – Resolution through the Student Conduct Process. After receiving notice from the instructor under Section .10(7)(b), SCCS may proceed with the student conduct process and determine of whether to issue a Notice of Allegations for violating Section .04(1). A decision by SCCS not to issue a Notice of Allegations shall not be used by the student to support an appeal of an academic penalty imposed by the student's instructor. In addition, SCCS may issue a Notice of Allegations for violating Section .04(1) regardless of the response of the instructor to the alleged academic dishonesty. If an instructor alleges that a student engaged in academic dishonesty and the student wants to appeal the academic penalty and/or SCCS issues a Notice of Allegations containing an allegation of a violation of Section .04(1), then the allegations against the student and the issue of the appropriate academic penalty shall be resolved through a Resolution Agreement, a Formal Hearing, or an Alternative Resolution Process.

(9) College of Law. The University of Tennessee College of Law has adopted and promulgated its own Code of Academic Conduct, Chapter 1720-04-09. Chapter 1720-04-

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

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

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

(1) Background. The University of Tennessee holds paramount the health, safety, and welfare of students. Accordingly, all University students are expected to alert appropriate officials in the event of a health, safety, or welfare emergency, including, without limitation, a situation involving the abuse of alcohol or other drugs.

(2) Expectations. When individual students know or reasonably should have known that other individual students are in need of emergency medical attention, the individual students are expected to: (1) contact appropriate people to report the incident and request assistance (e.g., University staff members, law enforcement), and provide those people with the names and contact information for the individual students reporting the incident and the impaired individual students; and (2) demonstrate cooperation and care by remaining with the impaired individual students and providing reasonable assistance during and after the incident. Individual students who take all of the steps described in this Section .11(2) will be referred to as a "Good Samaritan" under the Code. The individual students in need of emergency medical attention will be referred to as an "impaired individual student" under the Code.

(3) Amnesty for Individual Good Samaritans. Unless individual Good Samaritans have engaged in a repeated or serious violation of the Standards of Conduct (e.g., physical or sexual assault, property destruction, disorderly behavior, theft, second incident of misconduct involving alcohol or drugs), individual Good Samaritans will not be subject to formal University disciplinary action for misconduct discovered by the University as a result of the Good Samaritan's report. While no formal University disciplinary action may be taken, the individual students who acted as a Good Samaritan may be required to meet with a University staff member to discuss the individual Good Samaritan's misconduct and adhere to appropriate remedial and/or educational recommendations.

(4) Amnesty for Individual Impaired Students. Unless individual impaired students have engaged in a repeated or serious violation of the Standards of Conduct (e.g., physical or sexual assault, property destruction, disorderly behavior, theft, second incident of misconduct involving alcohol or drugs), individual impaired students will not be subject to formal University disciplinary action for misconduct discovered by the University as a result of the Good Samaritan's report. While no formal University disciplinary action may be taken, the individual impaired students may be required to meet with a University staff member, participate in educational activities, and/or establish that the individual students have addressed issues that contributed to the misconduct.

(5) Application of the Amnesty Policy to Student Organizations. Student organizations, through their officers and members, are also expected to take responsible action in emergency situations. While the Policy on Amnesty for Individual Good Samaritans and Students in Need of Emergency Medical Attention may not fully apply, adherence to steps described in Section .11(2) by a student organization's officers and/or members will be considered a mitigating factor when determining the outcome of or sanction for

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

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

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

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

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

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

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

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

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

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

(1) Attend: To participate in a meeting or hearing electronically or in person.

(2) Business Day: Any weekday not designated by the University as a holiday or administrative closure day. When calculating a time period of business days specified in the Code, the business day of the event that triggers a time period is excluded.

(3) Chairperson: A faculty or staff member appointed by SCCS to preside over and facilitate a SCB Hearing.

(4) Code, Code of Conduct, or Student Code of Conduct: The University of Tennessee, Knoxville's Student Code of Conduct, Chapter 1720-04-03.

(5) Complainant: An individual who may have been subjected to student conduct that violates the Standards of Conduct, regardless of whether that individual makes a complaint or report to SCCS. This term does not imply pre-judgment concerning whether the Respondent violated the Standards of Conduct. SCCS is the final decision maker with respect to whether an individual is a Complainant for purposes of the Code.

(6) Conduct Officer: A University employee designated by SCCS to present information on behalf of SCCS to the Student Conduct Board. The Conduct Officer shall be employed in the Division of Student Life but is not required to be employed by SCCS. However, in a case involving alleged academic dishonesty in which SCCS has not issued a Notice of Allegations, the instructor generally will be designated as the Conduct Officer.

(7) Disciplinary Hold: The University hold described in Section .06(4)(c).

(8) Disciplinary Records: A written record that personally identifies a Respondent and is maintained by SCCS.

(9) Faculty Member or Instructor: A person hired by the University to conduct teaching, research, or supervised clinical placements.

(10) Formal Hearing: A SCB Hearing, a hearing before a Student Life Hearing Officer, and/or a UAPA Hearing.

(11) Good Faith: Having a belief in the truth of information that a reasonable person in the same position could have, based on the information known to the person communicating the information at the time the information was communicated by that person. Information is not communicated in good faith if it is communicated with knowing or reckless disregard for information that would negate the former information.

(12) Knoxville Area: The geographical area that consists of the following counties in the state of Tennessee: Knox, Anderson, Union, Grainger, Jefferson, Sevier, Blount, Loudon, and Roane.

(13) Member of the University Community: A person who is a student, University employee, University volunteer, invited visitor to University-controlled property, or participant in a University-affiliated activity.

(14) Notice or Notify (given to students): Written notice transmitted by United States mail, courier service, or hand delivery to the address the University's Registrar has on file for the student; and/or by e-mail to a student's University-provided e-mail account. When a notice is transmitted by United States mail or courier service, the notice is effective on the

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

(15) Possession: Direct control of a substance or property, actual knowledge of a substance or property, and/or being in such close proximity to the substance or property that it is a reasonable presumption that one had knowledge of the substance or property.

(16) Protected Activity: A person's good faith: (1) opposition to conduct prohibited under the Standards of Conduct; (2) report to the University about conduct prohibited under the Standards of Conduct to the University; (3) participation (or reasonable expectation of participation) in any manner in an investigation, meeting, hearing, or interim measure; or (4) exercise of rights or responsibilities under any provision of the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act.

(17) Reasonable Person: A sober, objectively reasonable person in the same situation, and with the same sex, gender identity, and sexual orientation as the person whose words and/or conduct are being evaluated.

(18) Relevant Information: Information having any tendency to make the existence of any fact that is of consequence to determining whether the Respondent violated the Standards of Conduct more probable or less probable than it would be without the information.

(19) Respondent: A student or student organization who has been accused of violating the Standards of Conduct and/or whose conduct is being investigated by SCCS.

(20) Sanction: An administrative sanction and/or a developmental sanction.

(21) SCB: Student Conduct Board.

(22) SCCS: The Office of Student Conduct and Community Standards, which acts through University employees designated by the Director of SCCS to act on behalf of the University in the student conduct process, including, without limitation University employees who work in SCCS and University employees who work in University Housing.

(23) Staff Member: A person employed by the University on a part- or full-time basis, primarily involved in planning, organizing, staffing, directing and controlling efforts to achieve the goals and objectives of the University.

(24) Standards of Conduct: Chapter 1720-04-03-.04.

(25) Student: For purposes of the Code, the term "student" means:

(a) A person enrolled or registered for study at the University, either full-time or part-time, pursuing undergraduate, graduate, or professional studies, as well as non-degree and non-credit programs and courses;

(b) A student organization;

(c) A person who has completed the immediately preceding academic term and is eligible for re-enrollment;

(d) A person who is not officially enrolled but who has a continuing relationship with the University (e.g., on educational leave or other approved leave status);

(e) A person who attended the University during a previous academic term and who engaged in misconduct during the time of enrollment; and/or

(f) A person who has been admitted to the University and later matriculates at the University, with respect to misconduct:

1. That occurs as part of the application process; or

2. That occurs post-admission and pre-matriculation and falls within the jurisdiction of the Code (e.g., occurs on University-controlled property).

(26) Student Life Hearing Officer. As more fully described in Section .07(2)(d), a University employee designated by the Director of SCCS to conduct a Formal Hearing.

(27) Student Organization: An organization that is composed solely of University students that has submitted a pending application or has completed the process for registration according to University rules.

(28) UAPA: Uniform Administrative Procedures Act, Tennessee Code Annotated, § 4-5-301 et seq.

(29) UAPA Hearing: A hearing conducted by an ~~University~~ administrative judge or hearing officer in accordance with the University's procedures for conducting a contested case hearing pursuant to the UAPA, Chapter 1720-01-05.

(30) University: The University of Tennessee, Knoxville; the University of Tennessee Institute of Agriculture; and their campuses, centers, institutes, and constituent parts including, without limitation, their academic, administrative, or auxiliary departments or divisions.

(31) University-Affiliated Activity: means an activity on or off University-controlled property that is initiated, aided, authorized, sponsored, or supervised by the University.

(32) University-Controlled Property: All land, grounds, structures, or any other property owned, controlled, or operated by the University. For purposes of this rule, University-controlled property includes, without limitation, all streets, alleys, sidewalks, and public ways abutting such property. University-controlled property also includes computers and network systems owned, controlled, or operated by the University or funded by the University.

(33) University Official: An employee of the University, including, without limitation, faculty members and staff members, or, for purposes of this Code, a University-recognized volunteer, when acting in the performance of their duties. Student employees may be considered University officials when acting in the performance of their duties (e.g., event staff, resident assistants, and teaching assistants).

(34) Vice Chancellor for Student Life: The University's chief student affairs officer, to whom the Chancellor has delegated responsibility for the administration of the Code. For the

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

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

(36) Written: To communicate words either on paper and/or electronically. For example, a notice delivered via e-mail constitutes a written notice under the Code.

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

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

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

Date: June 28, 2018

Signature:

Name of Officer: Matthew Scoggins

Title of Officer: General Counsel

Subscribed and sworn to before me on: June 28, 2018

Notary Public Signature: Lynette Russell

My commission expires on: 12-4-18

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

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

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

Herbert H. Slatery III
Attorney General and Reporter

6/29/2018
Date

Department of State Use Only

Filed with the Department of State on: 6/29/18

Effective for: 180 *days

Effective through: 12/26/18

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

Tre Hargett
Secretary of State

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PUBLIC ACTS

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Commerce and Insurance
DIVISION:	Regulatory Boards
SUBJECT:	Scrap Metal Dealer Registration Program
STATUTORY AUTHORITY:	These rules were drafted in response to 2017 Public Chapter 414.
EFFECTIVE DATES:	September 5, 2018 through June 30, 2019
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	These proposed rules amend the current rules in the following ways: (1) Removes the requirement that each employee of a registered scrap metal dealer must procure a separate registration; (2) Requires scrap metal dealers to provide a list of addresses of all scrap metal businesses located in Tennessee to the Program; (3) Requires that each legally cognizable organization or entity that is a registrant or applicant disclose to the Program if a member, as defined in Title 48 of the Tennessee Code, of that organization/entity has ever been convicted of a violation of the Tennessee Scrap Metal Registration Program, T.C.A. Title 62, Chapter 9, or convicted of the criminal offense of theft, burglary or vandalism where the offense involves scrap metal; (4) States that the conviction of a member, as defined in Title 48 of the Tennessee Code, of an organization/entity that is a registrant or applicant in the Program constitutes a conviction of the organization/entity; and (5) Updates the uniform terminology to be more consistent with industry standards.

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 may affect small scrap metal businesses, but in a beneficial way, by eliminating the requirement that a scrap metal registrant procure a license for each of its employees. This should reduce cost and therefore directly benefit those businesses.

   In the fiscal note for 2017 Public Chapter 414, it was projected that 278 out of 960 current scrap metal dealers would not have to renew as they are agents of another registered scrap dealer. In addition, it is also assumed that all 218 locations that are currently registered would no longer be required to register.

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 would require minimal, if any, costs for compliance.

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

   The proposed rule may affect small businesses, but in a positive way. The rule will no longer require scrap metal dealers to register each employee separately; therefore it will reduce registration costs.

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 Program knows of no other alternative method to achieve the goals exhibited by this rule.

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

   The Program knows of no other rules, federal or state, that compare.

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:

   An exemption for small businesses would not be beneficial.

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 Tennessee Scrap Metal Registration Program foresees no impact on any local governments.

Additional Information Required by Joint Government Operations Committee

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

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

These rules amend the current rules in the following ways:

(1) Removes the requirement that each employee of a registered scrap metal dealer must procure a separate registration.
(2) Requires scrap metal dealers to provide a list of addresses of all scrap metal businesses located in Tennessee to the Program.
(3) Requires that each legally cognizable organization or entity that is a registrant or applicant disclose to the Program if a member, as defined in Title 48 of the Tennessee Code, of that organization/entity has ever been convicted of a violation of the Tennessee Scrap Metal Registration Program, T.C.A. Title 62, Chapter 9, or convicted of the criminal offense of theft, burglary or vandalism where the offense involves scrap metal.
(4) States that the conviction of a member, as defined in Title 48 of the Tennessee Code, of an organization/entity that is a registrant or applicant in the Program constitutes a conviction of the organization/entity.
(5) Updates the uniform terminology to be more consistent with industry standards.

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

These rules were drafted in response to 2017 Public Chapter 414.

(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 would affect scrap metal businesses in general, but we believe they would urge the adoption of this rule because the proposed rules are beneficial to the industry.

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

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

This rule is not expected to create a probable increase or decrease state and local government revenues and expenditures.

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

Sarah Mathews, Assistant General Counsel
Roxana Gumucio, Executive Director

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

Sarah Mathews, Assistant General Counsel Roxana Gumucio, Executive Director

(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

Sarah Mathews 500 James Robertson Parkway Nashville, TN 37243 615-741-3072 Sarah.Mathews@tn.gov Roxana Gumucio 500 James Robertson Parkway Nashville, TN 37243 (615) 532-7081 Roxana.Gumucio@tn.gov

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

There is no known additional relevant information.

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For Department of State Use Only

Sequence Number: 06-15-18
Rule ID(s): 6970
File Date: 6/7/18
Effective Date: 9/5/18

Proposed Rule(s) Filing Form

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

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

Agency/Board/Commission: Tennessee Department of Commerce & Insurance, Scrap Metal Registration Program
Division: Regulatory Boards
Contact Person: Sarah M. Mathews
Address: 500 James Robertson Parkway, Nashville, Tennessee
Zip: 37243
Phone: (615) 532-6303
Email: Sarah.Mathews@tn.gov

Revision Type (check all that apply):
X Amendment
X 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
0780-05-14	Scrap Metal Dealer Registration Program
Rule Number	**Rule Title**
0780-05-14-.02	Definitions
0780-05-14-.03	Registration
0780-05-14-.04	Applications
0780-05-14-.05	Renewals
0780-05-14-.11	Uniform Terminology

Chapter Number	Chapter Title
0780-05-14	Scrap Metal Dealer Registration Program
Rule Number	**Rule Title**
0780-05-14-.12	Severability Rule

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Rule ID(s): _____

File Date: _____

Effective Date: _____

Proposed Rule(s) Filing Form - REDLINE

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.

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Agency/Board/Commission: Tennessee Department of Commerce & Insurance, Scrap Metal Registration Program
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Contact Person: Sarah M. Mathews
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Phone: (615) 532-6303
Email: Sarah.Mathews@tn.gov

Revision Type (check all that apply):
X Amendment
X 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)

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Chapter Number	**Chapter Title**
0780-05-14	Scrap Metal Dealer Registration Program
Rule Number	**Rule Title**
0780-05-14-.12	Severability Rule

Redline – 2017 Proposed Rules
Tennessee Scrap Metal Registration Program

Chapter 0780-05-14
Scrap Metal Dealer Registration Program
Amendments

Rule 0780-05-14-.02 Definitions is amended by deleting the text of the Rule in its entirety and substituting instead the following:

(1) As used in this chapter, unless the context otherwise requires, the definitions of terms ~~contained~~ referenced in T.C.A. § 62-9-101 to -102 are applicable to these rules, including, without limitation, the term "member" as referenced in T.C.A. § 62-9-102(b).

(2) "Legally cognizable organization or entity" means, according to the context, any corporation, limited liability company, partnership, limited partnership, joint venture, or other business entity recognized under Tennessee law.

(~~2~~3) "Person" means, according to the context, any individual, association, partnership, corporation, or any other legally cognizable organization or entity ~~or their employees and duly authorized agents who have the authority to buy, exchange or deal in scrap metal~~.

Authority: T.C.A §§ 62-9-101 and 62-9-102.

Rule 0780-05-14-.03 Registration is amended by deleting the text of the Rule in its entirety and substituting instead the following:

(1) Any person who buys, exchanges, or deals in scrap metal ~~either as an employer or employee~~ must register with the Department of Commerce and Insurance as a scrap metal dealer.

(2) Employees of a registered scrap metal dealer need not procure a separate scrap metal dealer license, unless the employee is buying, exchanging or dealing in scrap metal outside the scope of such employment.

(~~2~~3) All registrations issued under this part shall expire two (2) years from the date of issuance or renewal thereof.

(~~3~~4) Registration may be withdrawn by mailing the certificate of registration, along with any accompanying form required by the ~~d~~Department, back to the Department.

(~~4~~5) A change in address for a registrant or any business location shall be reported to the Department within thirty (30) days.

Authority: T.C.A § 62-9-102.

Rule 0780-05-14-.04 Applications is amended by deleting the text of the Rule in its entirety and substituting instead the following:

(1) All applications for registration as a scrap metal dealer shall be made on a form provided by the Department of Commerce and Insurance and accompanied by a non-refundable application fee.

(2) All applications must include the name of the applicant, the social security number or taxpayer identification number of the applicant, the physical and mailing address of the scrap metal dealer and the telephone number of the scrap metal dealer. All applications must be signed by the ~~applicant and by the~~

~~owner, partner or authorized corporate officer of the scrap metal dealer~~ individual applicant or by an authorized representative of an applicant that is a legally cognizable organization or entity.

(3) All scrap metal dealer applications must include the physical address of each business location in Tennessee that is used to purchase, exchange or deal in scrap metal or otherwise engage in the scrap metal business.

(~~3~~4) An applicant shall disclose, under penalty of perjury, any criminal conviction of a violation of this Act and any conviction of the criminal offense of theft, burglary or vandalism where the offense involves scrap metal and the date of any such conviction. Any such conviction of a member of an applicant that is a legally cognizable organization or entity constitutes a conviction of the applicant and must be disclosed and shall be grounds to deny the application for registration pursuant to T.C.A. § 62-9-110(b) and prohibit registration of the applicant pursuant to T.C.A. § 62-9-102(c).

(~~4~~5) Failure to disclose a criminal conviction on the application for registration shall be a basis for the denial of the application.

(~~5~~6) Failure to submit a complete application for registration shall be a basis for the denial of the application.

Authority: T.C.A §§ 62-9-102 and 62-9-110.

Rule 0780-05-14-.05 Renewals is amended by deleting the text of the Rule in its entirety and substituting instead the following:

(1) Prior to the expiration of their registration, a registrant shall submit an application for renewal of registration on the prescribed form and accompanied by a non-refundable renewal fee.

(2) All applications for renewal must include the name of the applicant, the social security number or taxpayer identification number of the applicant, the physical and mailing address of the scrap metal dealer and the telephone number of the scrap metal dealer. All applications for renewal must be signed by the ~~applicant and by the owner, partner or authorized corporate officer of the scrap metal dealer~~ individual applicant or by an authorized representative of an applicant that is a legally cognizable organization or entity.

(3) All scrap metal dealer applications for renewal must include the physical address of each business location in Tennessee that is used to purchase, exchange or deal in scrap metal or otherwise engage in the scrap metal business.

(~~3~~4) The application for renewal shall disclose, under penalty of perjury, any criminal conviction of a violation of this Act and any conviction of the criminal offense of theft, burglary or vandalism where the offense involves scrap metal and the date of any such conviction. Any such conviction of a member of an applicant that is a legally cognizable organization or entity constitutes a conviction of the applicant and must be disclosed and shall result in automatic revocation, pursuant to T.C.A. § 62-9-110(a), if applicable, and shall be grounds for disciplinary action against the registrant pursuant to T.C.A. § 62-9-110(b).

(~~4~~5) Failure to disclose a criminal conviction on the application for renewal shall be a basis for the denial of the renewal.

(~~5~~6) Failure to submit a complete application for renewal shall be a basis for the denial of the renewal.

(~~6~~7) Registrations cannot be renewed after they expire. If a registration is not renewed prior to expiration, a new application will be required to be submitted.

Authority: T.C.A §§ 62-9-102 and 62-9-110.

Rule 0780-05-14-.11 Uniform Terminology is amended by deleting the rule in its entirety and substituting instead, the following language so that, as amended, the paragraph shall read:

~~The following terms are the uniform terminology describing the types of metal and objects most commonly sold as scrap to be used in the transaction records:~~

~~Acetylene Cutting Torch~~
~~Air Conditioner~~
~~Air Conditioner Coil~~
~~Air Conditioner Condenser~~
~~Aluminum Ladder~~
~~Aluminum Panels~~
~~Angle Iron~~
~~Backflow Preventer~~
~~Bare Aluminum Wire~~
~~Bare Copper Wire~~
~~Bare Steel Wire~~
~~Batteries~~
~~Bolt Cutters~~
~~Cable – Aluminum~~
~~Cable – Copper~~
~~Cable – Steel~~
~~Catalytic Converter~~
~~Chains~~
~~Compressed Gas Cylinder/Tank~~
~~Copper Tubing~~
~~Dishwasher~~
~~Dryer~~
~~Electrical Box~~
~~Farm/Garden Equipment/Implements~~
~~Fence~~
~~Firearms~~
~~Fuel tank~~
~~Heater Core/Furnace~~
~~Insulated Aluminum Wire~~
~~Insulated Copper Wire~~
~~Insulated Steel Wire~~
~~Kitchen Exhaust Hood~~
~~Lawn Mower~~
~~Microwave Oven~~
~~Miscellaneous Aluminum Scrap~~
~~Miscellaneous Copper Scrap~~
~~Miscellaneous Iron Scrap~~
~~Miscellaneous Steel Scrap~~
~~Motor Vehicle~~
~~Motor Vehicle parts~~
~~Motor Vehicle – Crushed~~
~~Muffler/Muffler Pipe~~
~~Pipe – Iron~~
~~Pipe – Stainless Steel~~
~~Precious Metal~~
~~Radiator~~
~~Refrigerator/Freezer~~
~~Rolled Metal Coil~~
~~Scaffolding~~
~~Stove/Oven~~
~~Toolbox – Truck~~
~~Toolbox – Jobsite~~
~~Washing Machine~~
~~Welder~~
~~Wrought Iron~~

The following terms are the uniform terminology describing the types of metals and objects most commonly sold as scrap to be used in the transaction records:

(1) Regulated Scrap Metal

(a) #1 Copper

(b) #2 Copper

(c) #1 Insulated Copper

(d) #2 Insulated Copper

(e) Bare Bright Copper

(f) Catalytic Converter

(g) Aluminum and/or Copper Radiator

(h) Motor Vehicle

(i) Metal Beer Keg

(2) Ferrous Scrap. This includes, but is not limited to, the following types of scrap: appliances, cast iron, sheet metal, steel and wrought iron.

(3) Non-Ferrous Scrap. This includes, but is not limited to, the following types of scrap: aluminum (all grades), aluminum cans, brass, lead, stainless steel and tin.

Authority: T.C.A §§ 62-9-102, 62-9-104 and 62-9-113(b).

Chapter 0780-05-14
Scrap Metal Dealer Registration Program
New Rules

Table of Contents

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0780-05-14-.07 Check Issuance Fee
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0780-05-14-.09 Revocation
0780-05-14-.10 Uniform Marking
0780-05-14-.11 Uniform Terminology
0780-05-14-.12 Severability Rule

New Rule 0780-05-14-.12 Severability Rule is added and shall read:

If any Rule or portion of a Rule of this Chapter or its applicability to any person or circumstance is held invalid by a court, the remainder of the Chapter or the applicability of the provision to other persons or circumstances shall not be affected. To this end, the provisions of this Chapter are declared severable.

Authority: T.C.A § 62-9-102.

Rules of Tennessee Scrap Metal Registration Program
Chapter 0780-05-14 Scrap Metal Dealer Registration Program
Rules 0780-05-14-.02, .03, .04, .05, .11 and .12

* 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 Tennessee Scrap Metal Registration Program on 02/22/2018, and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of ninety (90) days of the filing of the proposed rule with the Secretary of State.

DENISE M. LEWIS STATE OF TENNESSEE NOTARY PUBLIC WILSON COUNTY, TENN. My Commission Expires

Date: 5/1/18

Signature: Julie Mix McPeak

Name of Officer: Julie Mix McPeak

Title of Officer: Commissioner, Department of Commerce & Insurance

Subscribed and sworn to before me on: 5/1/18

Notary Public Signature: Denise M Lewis

My commission expires on: 1/15/20

Agency/Board/Commission: Tennessee Scrap Metal Registration Program

Rule Chapter Number(s):
0780-05-14-.02 Definitions
0780-05-14-.03 Registration
0780-05-14-.04 Applications
0780-05-14-.05 Renewals
0780-05-14-.11 Uniform Terminology
0780-05-14-.12 Severability Rule

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

5/29/2018
Date

Rules of Tennessee Scrap Metal Registration Program
Chapter 0780-05-14 Scrap Metal Dealer Registration Program
Rules 0780-05-14-.02, .03, .04, .05, .11 and .12

Department of State Use Only

Filed with the Department of State on: 6/7/18

Effective on: 9/5/18

Tre Hargett
Secretary of State

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PUBLICATIONS

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	State
DIVISION:	Charitable Solicitations, Fantasy Sports, and Gaming
SUBJECT:	Procedures for Operating Charitable Gaming Events
STATUTORY AUTHORITY:	Public Chapter 584, Acts of 2018
EFFECTIVE DATES:	September 10, 2018 through June 30, 2019
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	The proposed rules permit a charitable organization that is authorized by the General Assembly to conduct an annual event to submit the required application fee in two stages. An organization must submit an initial application fee of fifty dollars ($50). Within ninety (90) calendar days following the actual event, the organization must pay the remainder of the filing fee. The remainder of the filing fee is set up as a sliding scale and is based on the gross revenue received at the organization's annual event. The proposed rules make permanent the emergency rules filed on March 29, 2018.

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

There were no comments received during the open 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 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.

There are no small businesses affected by this proposed rule.

(1) 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 added costs since there are no small businesses affected by this proposed rule.

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

There are no small businesses impacted by this proposed rule, so there is no effect.

(3) 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 small businesses affected by this proposed rule.

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

There are no small businesses affected by this proposed rule.

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

There are no small businesses affected by this proposed rule.

Impact on Local Governments

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

The proposed rules will not impact 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 proposed rules permit a charitable organization that is authorized by the General Assembly to conduct an annual event to submit the required application fee in two stages. An organization must submit an initial application fee of fifty dollars ($50). Within ninety (90) calendar days following the actual event, the organization must pay the remainder of the filing fee. The remainder of the filing fee is set up as a sliding scale and is based on the gross revenue received at the organization's annual event. The proposed rules make permanent the emergency rules filed on March 29, 2018.

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

Public Chapter 584 of the 110th General Assembly signed into law on March 20, 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;

Charitable organizations properly registered with the Secretary of State's Division of Charitable Solicitations, Fantasy Sports, and Gaming that are authorized by the General Assembly to conduct an annual event are most directly affected by this rule. Due to the convenience of paying a low initial application fee of fifty dollars ($50) and the ability to accurately calculate the remainder fee due, these organizations should urge adoption of this rule.

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

N/A

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

The proposed rules will neither increase nor decrease local or state government revenues and expenditures.

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

Mona Hart, Director of Charitable Solicitations, Fantasy Sports, and Gaming; Tabatha Blackwell, Assistant Director/Legal Counsel

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

Mona Hart, Director of Charitable Solicitations, Fantasy Sports, and Gaming

(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

Mona Hart, Director of Charitable Solicitations, Fantasy Sports, and Gaming, 312 Rosa L. Parks Ave., 8th Floor, Tennessee Tower, Nashville, Tennessee, 37243; 615-741-2555; mona.hart@tn.gov

(l) 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

For Department of State Use Only

Sequence Number: 06-18-18
Rule ID(s): 7020
File Date: 6/12/18
Effective Date: 9/10/18

Rulemaking Hearing Rule(s) Filing Form

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

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

Agency/Board/Commission:	Department of State
Division:	Charitable Solicitations, Fantasy Sports, and Gaming
Contact Person:	Mona Hart
Address:	312 Rosa L. Parks Ave., 8th Floor, Nashville, Tennessee
Zip:	37243-1102
Phone:	615-741-2555
Email:	mona.hart@tn.gov

Revision Type (check all that apply):
_X_ 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**
1360-03-03	Procedures for Operating Charitable Gaming Events
Rule Number	**Rule Title**
1360-03-03-.02	Application Sliding Fee Scale
1360-03-03-.11	Accounting Procedures

Amendment to Chapter 1360-03-03
Procedures for Operating Charitable Gaming Events

Rule 1360-03-03-.02 Application Sliding Fee Scale is deleted in its entirety and amended so that as rewritten it shall read:

~~**1360-03-03-.02 APPLICATION SLIDING FEE SCALE.**~~

~~An application to hold an annual gaming event shall be submitted with the appropriate filing fee according to the organization's gross revenue for the annual event based on the following scale:~~

~~Event Gross Revenue~~	~~Filing Fee~~
~~$0.00 to $5,000.00~~	~~$150.00~~
~~$5001.00 to $10,000.00~~	~~$300.00~~
~~$10,001.00 to $20,000.00~~	~~$450.00~~
~~over $20,001.00~~	~~$600.00~~

1360-03-03-.02 APPLICATION INITIAL FEE AND REMAINDER FEE SLIDING SCALE.

An application to hold an annual gaming event shall be submitted with an initial application fee of fifty dollars ($50). An organization authorized by the General Assembly to operate an annual event shall file within ninety (90) calendar days following the actual event date, a financial accounting pursuant to Tenn. Code Ann. § 3-17-106(a)(1) along with the remaining application fee due according to the organization's gross revenue for the annual event based of the following scale:

Event Gross Revenue	**Filing Fee**
$0.00 to $5,000	$100
$5,000.01 to $10,000	$250
$10,000.01 to $20,000	$400
Over $20,000.01	$550

Authority: T.C.A. §§ 3-17-104, 3-17-106, and 3-17-115.

Paragraph (2) of Rule 1360-03-03-.11 Accounting Procedures is amended by deleting the paragraph in its entirety and by substituting instead the following so that, as amended paragraph (2) shall read as follows:

~~(2) Reporting. All organizations must file a financial report with the Division on forms approved by the Division. If the organization grosses more than fifty thousand dollars ($50,000) in revenue, the organization must also complete an audit of the annual event in accordance with T.C.A. § 3-17-106(c).~~

(2) Reporting. All organizations must file a financial accounting with the Division on forms approved by the Division along with the remainder fee due pursuant to Tenn. Code Ann. § 3-17-106(a)(1) and Rule 1360-03-03-.02. If the organization generates over fifty thousand dollars ($50,000) in gross revenue, the organization must also complete an audit of the annual event in accordance with Tenn. Code Ann. § 3-17-106(c).

Authority: T.C.A. §§ 3-17-106, and 3-17-115.

* 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 on 05/23/18 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: (04/03/18)

Rulemaking Hearing(s) Conducted on: (add more dates). (05/23/18)

Date: 5/24/18

Signature: Mona Hart

Name of Officer: MONA HART

Title of Officer: DIRECTOR OF CHARITABLE SOLICITATIONS, FANTASY SPORTS, AND GAMING

JENNIFER A. COWHERD STATE OF TENNESSEE NOTARY PUBLIC DAVIDSON COUNTY

Subscribed and sworn to before me on: 5/24/18

Notary Public Signature: Jennifer A Cowherd

My commission expires on: 11-05-2019

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. Slatery III

Herbert H. Slatery III
Attorney General and Reporter

6/7/2018
Date

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Filed with the Department of State on: 6/12/18

Effective on: 9/10/18

Tre Hargett

Tre Hargett
Secretary of State

Public Hearing Comments

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Environment and Conservation
DIVISION:	Air Pollution Control
SUBJECT:	Emission Regulations and Standards / Construction and Operating Permits / Sampling, Recording, and Reporting of Emissions / Hazardous Air Contaminants
STATUTORY AUTHORITY:	The revisions to the definitions of "exempt compounds" and "volatile organic compounds (VOC)" in paragraph (1) of Rule 1200-03-02-.01 are consistent with the federal amendments published by the EPA in 81 Fed. Reg. 50,330 (Aug. 1, 2016) and 81 Fed. Reg. 9339 (Feb. 25, 2016). These amendments are promulgated under the authority of Tenn. Code Ann. § 68-201-105.
EFFECTIVE DATES:	September 4, 2018 through June 30, 2019
FISCAL IMPACT:	Minimal
STAFF RULE ABSTRACT:	These rulemaking hearing rule amendments make several housekeeping revisions and revise the definitions of "exempt compounds" and "volatile organic compounds (VOC)" to be consistent with the federal definitions of these terms. The definition revisions add the compounds t-butyl acetate and 1, 1,2,2-Tetrafluoro-1-(2,2,2-trifluoroethoxy) ethane (HFE-347pcf2) to the list of compounds which are excluded from the definition of VOC on the basis that these compounds make a negligible contribution to tropospheric ozone formation. The housekeeping amendments also correct typographical errors and simplify the methods for submitting information or documents to the Division of Air Pollution Control. The amendment to paragraph (6) of Rule 1200-03-27-.02 reflects an earlier amendment to paragraph (8) of Rule 1200-03-18-.02. This amendment imposes no new requirements and simply makes these two paragraphs consistent.

Public Hearing Comments

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

Comment: EPA pointed out that the definitions of "exempt compounds" and "volatile organic compounds (VOC)" in paragraph (1) of Rule 1200-03-02-.01 were inconsistent with the federal definitions for these terms.

Response: The definitions for "exempt compounds" and "volatile organic compounds (VOC)" have been changed for consistency with the federal definitions.

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 amendments to the definitions of "exempt compounds" and "volatile organic compounds (VOC)" in paragraph (1) of Rule 1200-03-02-.01 and the remaining housekeeping amendments will have no significant impact on small business. The amendments merely make the definitions of "exempt compounds" and "volatile organic compounds (VOC)" consistent with federal law, correct typographical errors, and simplify the methods for submitting information or documents to the Division of Air Pollution Control. The amendment to paragraph (6) of Rule 1200-03-27-.02 reflects an earlier amendment to paragraph (8) of Rule 1200-03-18-.02. This amendment imposes no new requirements and simply makes these two paragraphs consistent.

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 Air Pollution Control Board 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;

These rule amendments make several housekeeping revisions and revise the definitions of "exempt compounds" and "volatile organic compounds (VOC)" to be consistent with the federal definitions of these terms. The definition revisions add the compounds t-butyl acetate and 1,1,2,2-Tetrafluoro-1-(2,2,2-trifluoroethoxy) ethane (HFE-347pcf2) to the list of compounds which are excluded from the definition of VOC on the basis that these compounds make a negligible contribution to tropospheric ozone formation. The housekeeping amendments also correct typographical errors and simplify the methods for submitting information or documents to the Division of Air Pollution Control. The amendment to paragraph (6) of Rule 1200-03-27-.02 reflects an earlier amendment to paragraph (8) of Rule 1200-03-18-.02. This amendment imposes no new requirements and simply makes these two paragraphs consistent.

(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 revisions to the definitions of "exempt compounds" and "volatile organic compounds (VOC)" in paragraph (1) of Rule 1200-03-02-.01 are consistent with the federal amendments published by the EPA in 81 Fed. Reg. 50,330 (Aug. 1, 2016) and 81 Fed. Reg. 9339 (Feb. 25, 2016). These amendments are promulgated under the authority of Tenn. Code Ann. § 68-201-105.

(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 housekeeping revisions should not have a significant impact on any entity. HFE-347pcf2 is used as a precision cleaning agent to remove contaminants including oil, flux, and fingerprints from items like medical devices, artificial implants, crucial military and aerospace items, electric components, printed circuit boards, optics, jewelry, ball bearings, aircraft guidance systems, film, relays, and a variety of metal components, among others. T-butyl acetate is contained in products such as paints, inks and adhesives. The amendments will no longer require facilities manufacturing or using these products to report emissions of these substances to the Division. This proposed action will eliminate unnecessary requirements imposed on the facilities using these substances. The amendment to Paragraph (6) of Rule 1200-03-27-.02 does not impose any new requirement on any source subject to the paragraph. No comments on these proposed changes were received from any regulated entity.

(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 Air Pollution Control 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;

The fiscal impact of this proposed revision is minimal.

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

Malcolm H. Butler
Division of Air Pollution Control
William R. Snodgrass Tennessee Tower
312 Rosa L. Parks Avenue, 15th Floor

Nashville, Tennessee 37243
Malcolm.Butler@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
Assistant 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.

The Tennessee Air Pollution Control Board is not aware of any additional relevant information.

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Sequence Number: 06-13-18
Rule ID(s): 6942-6950
File Date: 6/6/18
Effective Date: 9/4/18

Rulemaking Hearing Rule(s) Filing Form

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

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

Agency/Board/Commission:	Environment & Conservation
Division:	Air Pollution Control
Contact Person:	Malcolm H. Butler
Address:	William R. Snodgrass Tennessee Tower 312 Rosa L. Parks Avenue, 15th Floor Nashville, TN
Zip:	37243
Phone:	(615) 532-0600
Email:	Malcolm.Butler@tn.gov

Revision Type (check all that apply):
X 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**
1200-03-02	Definitions
Rule Number	**Rule Title**
1200-03-02-.01	General Definitions

Chapter Number	**Chapter Title**
1200-03-05	Visible Emission Regulations
Rule Number	**Rule Title**
1200-03-05-.05	Standard for Certain Existing Sources

Chapter Number	**Chapter Title**
1200-03-07	Process Emission Standards
Rule Number	**Rule Title**
1200-03-07-.01	General Process Particulate Emissions Standards

Chapter Number	Chapter Title
1200-03-08	Fugitive Dust
Rule Number	**Rule Title**
1200-03-08-.01	Fugitive Dust

Chapter Number	Chapter Title
1200-03-09	Construction and Operating Permits
Rule Number	**Rule Title**
1200-03-09-.02	Operating Permits

Chapter Number	Chapter Title
1200-03-10	Required Sampling, Recording, and Reporting
Rule Number	**Rule Title**
1200-03-10-.01	Sampling Required to Establish Air Contaminant Emission Levels
1200-03-10-.02	Monitoring of Source Emissions, Recording, and Reporting of the Same are Required
1200-03-10-.04	Sampling, Recording, and Reporting Required for Major Stationary Sources

Chapter Number	Chapter Title
1200-03-11	Hazardous Air Contaminants
Rule Number	**Rule Title**
1200-03-11-.02	Asbestos

Chapter Number	Chapter Title
1200-03-12	Methods of Sampling and Analysis
Rule Number	**Rule Title**
1200-03-12-.02	Procedures for Ambient Sampling and Analysis

Chapter Number	Chapter Title
1200-03-27	Nitrogen Oxides
Rule Number	**Rule Title**
1200-03-27-.02	General Provisions and Applicability

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.

Chapter 1200-03-02
Definitions

Amendments

Subparagraph (r) of paragraph (1) of Rule 1200-03-02-.01 General Definitions is amended by deleting it in its entirety and substituting instead the following:

(r) Fuel ~~Burning Equipment~~ burning equipment is any equipment, device, or contrivance and all appurtenances thereto, in which fuel is burned for the primary purpose of producing thermal ~~energy~~ or mechanical energy and in which the material being heated is not contacted by, and adds no substance to, the products of combustion.

Authority: T.C.A. §§ 4-5-201 et seq., 68-201-201 et seq., and 68-201-105.

Subparagraph (III) of paragraph (1) of Rule 1200-03-02-.01 General Definitions is amended by deleting it in its entirety and substituting instead the following:

(III) "Exempt compounds" means any of the following compounds:

1. Carbon monoxide; carbon dioxide; carbonic acid; metallic carbides and carbonates; ammonium carbonate; propylene carbonate; dimethyl carbonate; methane; ethane; methylene chloride (dichloromethane); 1,1,1-trichloroethane (methyl chloroform); 1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113); trichlorofluoromethane (CFC-11); dichlorodifluoromethane (CFC-12); chlorodifluoromethane (HCFC-22); trifluoromethane (HFC-23); 1,2-dichloro 1,1,2,2-tetrafluoroethane (CFC-114); chloropentafluoroethane (CFC-115); 1,1,1-trifluoro 2,2-dichloroethane (HCFC-123); 1,1,1,2-tetrafluoroethane (HFC-134a); 1,1-dichloro 1-fluoroethane (HCFC-141b); 1-chloro 1,1-difluoroethane (HCFC-142b); 2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124); pentafluoroethane (HFC-125); 1,1,2,2-tetrafluoroethane (HFC-134); trans-1,3,3,3-tetrafluoropropene (HFO-1234ze); 1,1,1-trifluoroethane(HFC-143a);1,1-difluoroethane (HFC-152a); parachlorobenzotrifluoride (PCBTF); cyclic, branched, or linear completely methylated siloxanes; acetone; perchloroethylene (tetrachloroethylene); 3,3-dichloro-1,1,1,2,2-pentafluoropropane (HCFC-225ca); 1,3-dichloro-1,1,2,2,3-pentafluoropropane (HCFC-225cb); 1,1,1,2,3,4,4,5,5,5-decafluoropentane (HFC-43-10mee); difluoromethane (HFC-32); ethylfluoride (HFC-161); 1,1,1,3,3,3-hexafluoropropane (HFC-236fa); 1,1,2,2,3-pentafluoropropane (HFC-245ca); 1,1,2,3,3-pentafluoropropane (HFC-245ea); 1,1,1,2,3-pentafluoropropane (HFC-245eb); 1,1,1,3,3-pentafluoropropane (HFC-245fa); 1,1,1,2,3,3-hexafluoropropane (HFC-236ea); 1,1,1,3,3-pentafluorobutane (HFC-365mfc); chlorofluoromethane (HCFC-31); 1-chloro-1-fluoroethane (HCFC-151a); 1,2-dichloro-1,1,2-trifluoroethane (HCFC-123a); 1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxy-butane ($C_4F_9OCH_3$ or HFE-7100); 2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane ($(CF_3)_2CFCF_2OCH_3$); 1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane ($C_4F_9OC_2H_5$ or HFE-7200); 2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane ($(CF_3)_2CFCF_2OC_2H_5$); methyl acetate; 1,1,1,2,2,3,3-heptafluoro-3-methoxy-propane (n-$C_3F_7OCH_3$, HFE–7000); 3-ethoxy-1,1,1,2,3,4,4,5,5,6,6,6-dodecafluoro-2-(trifluoromethyl) hexane (HFE–7500); 1,1,1,2,3,3,3-heptafluoropropane (HFC 227ea); methyl formate ($HCOOCH_3$); 1,1,1,2,2,3,4,5,5,5-decafluoro-3-methoxy-4-trifluoromethyl-pentane (HFE-7300); *trans*-1,3,3,3-tetrafluoropropene; HCF_2OCF_2H (HFE-134); $HCF_2OCF_2OCF_2H$ (HFE-236cal2); $HCF_2OCF_2CF_2OCF_2H$ (HFE-338pcc13); $HCF_2OCF_2OCF_2CF_2OCF_2H$ (H-Galden 1040x or H-Galden ZT 130 (or 150 or

180)); *trans* 1-chloro-3,3,3-trifluoroprop-1-ene; 2,3,3,3-tetrafluoropropene; 2-amino-2-methyl-1-propanol (AMP); t-butyl acetate; 1,1,2,2-Tetrafluoro-1-(2,2,2-trifluoroethoxy) ethane (HFE-347pcf2) and perfluorocarbon compounds which fall into these classes:

(i) Cyclic, branched, or linear, completely fluorinated alkanes;

(ii) Cyclic, branched, or linear, completely fluorinated ethers with no unsaturations;

(iii) Cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations; and

(iv) Sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine.

2. Reserved. ~~The following compound(s) are not exempt for purposes of all recordkeeping, emissions reporting, photochemical dispersion modeling and inventory requirements which apply to VOC and shall be uniquely identified in emission reports, but are exempt for purposes of VOC emissions limitations or VOC content requirements: t-butyl acetate.~~

Authority: T.C.A. §§ 4-5-201 et seq., 68-201-201 et seq., and 68-201-105.

Subparagraph (mmm) of paragraph (1) of Rule 1200-03-02-.01 General Definitions is amended by deleting it in its entirety and substituting instead the following:

(mmm) "Volatile organic compounds (VOC)" means any compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate, which participates in atmospheric photochemical reactions.

1. This includes any such organic compound other than the following, which have been determined to have negligible photochemical reactivity: methane; ethane; methylene chloride (dichloromethane); 1,1,1-trichloroethane (methyl chloroform); 1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113); trichlorofluoromethane (CFC-11); dichlorodifluoromethane (CFC-12); chlorodifluoromethane (HCFC-22); trifluoromethane (HFC-23); 1,2-dichloro 1,1,2,2-tetrafluoroethane (CFC-114); chloropentafluoroethane (CFC-115); 1,1,1-trifluoro 2,2-dichloroethane (HCFC-123); 1,1,1,2-tetrafluoroethane (HFC-134a); 1,1-dichloro 1-fluoroethane (HCFC-141b); 1-chloro 1,1-difluoroethane (HCFC-142b); 2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124); pentafluoroethane (HFC-125); 1,1,2,2-tetrafluoroethane (HFC-134); trans-1,3,3,3-tetrafluoropropene (HFO-1234ze); 1,1,1-trifluoroethane (HFC-143a); 1,1-difluoroethane (HFC-152a); parachlorobenzotrifluoride (PCBTF); cyclic, branched, or linear completely methylated siloxanes; acetone; perchloroethylene (tetrachloroethylene); 3,3-dichloro-1,1,1,2,2-pentafluoropropane (HCFC-225ca); 1,3-dichloro-1,1,2,2,3-pentafluoropropane (HCFC-225cb); 1,1,1,2,3,4,4,5,5,5-decafluoropentane (HFC-43-10mee); difluoromethane (HFC-32); ethylfluoride (HFC-161); 1,1,1,3,3,3-hexafluoropropane (HFC-236fa); 1,1,2,2,3-pentafluoropropane (HFC-245ca); 1,1,2,3,3-pentafluoropropane (HFC-245ea); 1,1,1,2,3-pentafluoropropane (HFC-245eb); 1,1,1,3,3-pentafluoropropane (HFC-245fa); 1,1,1,2,3,3-hexafluoropropane (HFC-236ea); 1,1,1,3,3-pentafluorobutane (HFC-365mfc); chlorofluoromethane (HCFC-31); 1-chloro-1-fluoroethane (HCFC-151a); 1,2-dichloro-1,1,2-trifluoroethane (HCFC-123a); 1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxy-butane ($C_4F_9OCH_3$ or HFE-7100); 2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane ($(CF_3)_2CFCF_2OCH_3$); 1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane ($C_4F_9OC_2H_5$ or HFE-7200); 2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane ($(CF_3)_2CFCF_2OC_2H_5$); methyl acetate; 1,1,1,2,2,3,3-heptafluoro-3-methoxy-propane ($n\text{-}C_3F_7OCH_3$, HFE–7000); 3-ethoxy-1,1,1,2,3,4,4,5,5,6,6,6-dodecafluoro-2-(trifluoromethyl)

hexane (HFE–7500); 1,1,1,2,3,3,3-heptafluoropropane (HFC 227ea); methyl formate ($HCOOCH_3$); 1,1,1,2,2,3,4,5,5,5-decafluoro-3-methoxy-4-trifluoromethyl-pentane (HFE-7300); propylene carbonate; dimethyl carbonate; *trans*-1,3,3,3-tetrafluoropropene; HCF_2OCF_2H (HFE-134); $HCF_2OCF_2OCF_2H$ (HFE-236cal2); $HCF_2OCF_2CF_2OCF_2H$ (HFE-338pcc13); $HCF_2OCF_2OCF_2CF_2OCF_2H$ (H-Galden 1040x or H-Galden ZT 130 (or 150 or 180)); *trans* 1-chloro-3,3,3-trifluoroprop-1-ene; 2,3,3,3-tetrafluoropropene; 2-amino-2-methyl-1-propanol (AMP); t-butyl acetate; 1,1,2,2-Tetrafluoro-1-(2,2,2-trifluoroethoxy) ethane (HFE-347pcf2) and perfluorocarbon compounds which fall into these classes:

(i) Cyclic, branched, or linear, completely fluorinated alkanes;

(ii) Cyclic, branched, or linear, completely fluorinated ethers with no unsaturations;

(iii) Cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations; and

(iv) Sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine.

2. For purposes of determining compliance with emissions limits, VOC will be measured by the test methods in the approved State implementation plan (SIP) or 40 CFR part 60, Appendix A, as applicable. Where such a method also measures compounds with negligible photochemical reactivity, these negligibly-reactive compounds may be excluded as VOC if the amount of such compounds is accurately quantified, and such exclusion is approved by the Technical Secretary.

3. As a precondition to excluding these compounds as VOC or at any time thereafter, the Technical Secretary may require an owner or operator to provide monitoring or testing methods and results demonstrating, to the satisfaction of the Technical Secretary, the amount of negligibly-reactive compounds in the source's emissions.

4. For purposes of enforcement for a specific source, the test methods specified in these regulations, in the approved SIP, or in a permit issued pursuant to these regulations shall be used.

5. Reserved. ~~The following compound(s) are VOC for purposes of all recordkeeping, emissions reporting, photochemical dispersion modeling and inventory requirements which apply to VOC and shall be uniquely identified in emission reports, but are not VOC for purposes of VOC emissions limitations or VOC content requirements: t-butyl acetate.~~

Authority: T.C.A. §§ 4-5-201 et seq., 68-201-201 et seq., and 68-201-105.

Chapter 1200-03-05
Visible Emission Regulations

Amendment

Subparagraph (b) of paragraph (2) of Rule 1200-03-05-.05 Standard for Certain Existing Sources is amended by deleting it in its entirely and substituting instead the following:

(b) ~~This rule shall no apply to sources~~ The air contaminant source is not regulated under the rules contained in Chapter 1200-03-11, Chapter 1200-03-16, and Chapters 1200-03-25 and Paragraph 1200-03-09-.01(4).

Authority: T.C.A. §§ 4-5-201 et seq., 68-201-201 et seq., and 68-201-105.

Chapter 1200-03-07
Process Emission Standards

Amendment

The table of contents to Chapter 1200-03-07 Process Emission Standards is amended by deleting the words "Catalytic Cracking Units" from the title of Rule 1200-03-07-.01, so that, as amended, the title of Rule 1200-03-07-.01 shall read: General Process Particulate Emission Standards ~~Catalytic Cracking Units~~.

Authority: T.C.A. §§ 4-5-201 et seq., 68-201-201 et seq., and 68-201-105.

Paragraph (5) of Rule 1200-03-07-.01 General Process Particulate Emission Standards is amended by deleting it in its entirety and substituting instead the following:

(5) Upon mutual agreement of the owner or operator of any air contaminant source and the Technical Secretary, an emission limit more restrictive than that otherwise specified in this ~~Chapter~~ chapter may be established. This emission limit shall be stated as a special condition for any permit or order issued concerning the source. Violation of this agreed to, more stringent emission standard is grounds for revocation of the issued permit and/or other enforcement measures provided for in the Tennessee Air Quality Act.

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

Chapter 1200-03-08
Fugitive Dust

Amendments

Subparagraph (b) of paragraph (1) of Rule 1200-03-08-.01 Fugitive Dust is amended by deleting it in its entirety and substituting instead the following:

(b) Application of asphalt, ~~oil,~~ water, or suitable chemicals on dirt roads, material stock piles, and other surfaces which can create airborne dusts;

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

Chapter 1200-03-09
Construction and Operating Permits

Amendment

Paragraph (1) of Rule 1200-03-09-.02 Operating Permits is amended by deleting it in its entirety and substituting instead the following:

(1) Any person planning to operate an air contaminant source constructed or modified in accordance with a construction permit issued by the Technical Secretary in Rule 1200-03-09-.01 shall apply for and receive from the Technical Secretary an operating permit or, if applicable, submit a notice of intent and obtain a notice of coverage or authorization after initial start-up of the air contaminant source. Ninety (90) days shall be allowed for this, provided paragraph (3) of this rule is complied with. This time period is extended from ninety (90) to one hundred twenty (120) days if stack sampling has been required as a condition on the construction permit, which is further extended to sixty (60) days after the stack sampling report is required on the construction permit if a certain time is specified, provided the stack sampling report is filed with the Division within sixty (60) days of initial start-up or the time specified on the construction permit ~~as that~~ and paragraph (3) of this rule is complied with, except as otherwise allowed in paragraph (11) of this rule.

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

Chapter 1200-03-10
Required Sampling, Recording, and Reporting

Amendments

Subparagraph (c) of paragraph (2) of Rule 1200-03-10-.01 Sampling Required to Establish Air Contaminant Emission Levels is amended by deleting it in its entirety and substituting instead the following:

(c) The Technical Secretary may conduct tests of air contaminant emissions from any source. Upon request of the Technical Secretary, the person responsible for the source to be tested shall provide, at no expense to the Technical ~~Secretary. Reasonable~~ Secretary, reasonable and necessary openings in stacks, vents, and ducts, along with safe and easy access thereto, including a suitable power source to the point of testing for proper determination of the level of air contaminant emissions.

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

Subparagraph (c) of paragraph (2) of Rule 1200-03-10-.02 Monitoring of Source Emissions, Recording, and Reporting of the Same are Required is amended by deleting it in its entirety and substituting instead the following:

(c) Owners or operator of facilities subject to rule 1200-03-12-.04 are required to submit a written report on emissions for each calendar quarter and the nature and cause of excess emissions, if known. The Technical Secretary will specify details of the reports required after the monitor has been performance tested. ~~General procedures are outlined below.~~

1. General Procedures:

(i) The source owner or operator shall report all 3-hour averages in excess of the applicable emission standard or all 24-hour averages in units of the applicable emission standard. The 3-hour and 24-hour values shall be computed by taking the average of three contiguous or 24 contiguous one-hour values of sulfur dioxide emissions. The one-hour average values may be obtained by integration over the one-hour period or be computed from four or more data points equally spaced over each one-hour period. Data recorded during periods of monitoring system break downs, repairs, calibration checks, and zero and span adjustments shall ~~notbe~~ not be included in the data averages.

(ii) In the event that the fuel burning installation contains discharge points utilizing continuous sulfur dioxide monitoring systems and discharge points which do not require monitoring systems (or where an individual monitoring system is inoperative), and the data from the monitoring system indicates a violation, an administrative hearing may be conducted by the Technical Secretary to determine the compliance status of the entire fuel burning installation.

(iii) To determine compliance where multiple units of fuel burning equipment are involved, an average weight on the basis of heat input shall be used.

2. The owners and operators of these sources must follow the same procedures as specified in parts ~~4., 6., and 7. of subparagraph 1200-03-10-.02(2)(b)~~ (2)(b)4, 6, and 7 of Rule 1200-03-10-.02. Alternative methods for converting sulfur dioxide monitoring instrument data to units of the applicable emission standard may be approved by the Technical Secretary ~~when demonstrated to him~~ if demonstrated to yield equivalent results.

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

Subparagraph (b) of paragraph (2) of Rule 1200-03-10-.04 Sampling, Recording, and Reporting Required for Major Stationary Sources is amended by deleting it in its entirety and substituting instead the following:

(b) Recordkeeping may include handwritten or computerized records and shall be kept in accordance with the manner approved by the Technical Secretary. The Technical Secretary or an employee of the Department authorized by the Technical Secretary shall have the authority to inspect the records during reasonable hours at the place where such records are kept. The source owner or operator must provide copies of the records to the Technical Secretary upon request. If the records are computerized, the ~~source~~ owner or operator may provide them to the Technical Secretary in an electronic format compatible with the Department's electronic data processing equipment for initial review. Upon discovery of electronic data that may reveal noncompliance, the Technical Secretary shall ask for ~~hard-copy~~ excerpts documenting the ~~noncompliance~~ noncompliance, and the ~~source~~ owner or operator shall comply with ~~his~~ the request. All electronic submittals shall be in "read only" format such that the submittal cannot be written over with different electronic data.

1. In the absence of a specific recordkeeping procedure, it is the general duty of a person required to keep the records required under this rule ~~1200-03-10-.04~~ in such a fashion that compliance with the applicable requirement can be readily ascertained.

2. Records must be legible, quantifiable and supported by documentation to validate the entries.

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

Chapter 1200-03-11
Hazardous Air Contaminants

Amendment

Part 1 of subparagraph (e) of paragraph (5) of Rule 1200-03-11-.02 Asbestos is amended by deleting it in its entirety and substituting instead the following:

1. Maintain waste shipment records, using ~~the form~~ a form similar to that shown in Figure 4 following subparagraph (6)(h) of this rule, and include the following information:

   (i) The name, address, and telephone number of the waste generator.

   (ii) The name, address, and telephone number of the transporter(s).

   (iii) The quantity of the asbestos-containing waste material in cubic meters (cubic yards).

   (iv) The presence of improperly enclosed or uncovered waste, or any asbestos-containing waste material not sealed in leak-tight containers. Report in writing to the Technical Secretary by the following working day, the presence of a significant amount of improperly enclosed or uncovered waste. Submit a copy of the waste shipment record along with the report.

   (v) The date of receipt.

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

Chapter 1200-03-12
Methods of Sampling and Analysis

Amendment

Paragraph (4) of Rule 1200-03-12-.02 Procedures for Ambient Sampling and Analysis is amended by deleting it in its entirety and substituting instead the following:

(4) All ambient monitoring data generated by continuous operating monitors, or intermittent sampling techniques, shall be submitted ~~on magnetic media~~ in a format acceptable to the Technical Secretary. ~~All ambient monitoring data generated by intermittent sampling techniques shall be submitted in a format acceptable to the Technical Secretary.~~

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

Chapter 1200-03-27
Nitrogen Oxides

Amendment

Paragraph (6) of Rule 1200-03-27-.02 General Provisions and Applicability is amended by deleting it in its entirety and substituting instead the following:

(6) The owner or operator of any facility in Anderson, Blount, Davidson, Knox, Rutherford, Shelby, Sumner, Williamson, or Wilson County which has actual emissions from stationary sources of 25 tons or more of volatile organic compounds (VOCs) and/or nitrogen oxides during a calendar year shall report to ~~the Technical Secretary~~ their permitting authority information and data concerning these emissions ~~and VOC emissions~~. This information and data shall be in the form prescribed by the Technical Secretary, and shall be submitted before March 31 of the year following the calendar year for which the information and data is reported. The first report shall be for the 1993 calendar year, and shall be submitted before March 31, 1994. Each report shall be ~~certified~~ signed by an official of the company, certifying that the information and data contained in the report is accurate to the best knowledge of the individual certifying the report. ~~Records must be kept by the facility, and maintained for a period of 3 years, documenting the information and data in each report.~~

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:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Dr. Ronne Adkins Commissioner's Designee, Dept. of Environment and Conservation	X				
Dr. John Benitez Licensed Physician with experience in health effects of air pollutants				X	
Karen Cisler Environmental Interests	X				
Dr. Wayne T. Davis Conservation Interests				X	
Stephen Gossett Working for Industry with technical experience				X	
Dr. Shawn A. Hawkins Working in field related to Agriculture or Conservation	X				
Richard Holland Working for Industry with technical experience	X				
Caitlin Roberts Jennings Small Generator of Air Pollution representing Automotive Interests	X				
Ken Moore Working in Municipal Government	X				
Dr. Joshua Fu Involved with Institution of Higher Learning on air pollution evaluation and control				X	
Mike Haverstick Working in management in Private Manufacturing	X				
Amy Spann, PE Registered Professional Engineer	X				
Larry Waters County Mayor	X				
Jimmy West 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 03/14/2018, 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: *12/15/17*

Rulemaking Hearing(s) Conducted on: (add more dates). *02/07/18*

Date: March 14, 2018

Signature: Quincy N. Styke III

Name of Officer: Quincy N. Styke, III

Title of Officer: Acting Technical Secretary

MALCOLM H. BUTLER
STATE OF TENNESSEE NOTARY PUBLIC
DAVIDSON COUNTY, TENN.

Subscribed and sworn to before me on: March 14, 2018

Notary Public Signature: Malcolm H. Butler

My commission expires on: September 7, 2020

Agency/Board/Commission: Air Pollution Control Board

Rule Chapter Number(s): 1200-03-02, 1200-03-05, 1200-03-07, 1200-03-08, 1200-03-09, 1200-03-10, 1200-03-11, 1200-03-12, and 1200-03-27

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

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

5/31/2018
Date

Department of State Use Only

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PUBLIC PATHWAYS

Filed with the Department of State on: 6/6/18

Effective on: 9/4/18

Tre Hargett
Tre Hargett
Secretary of State

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: The University of Tennessee (Martin)

DIVISION:

SUBJECT: Student Rights and Responsibilities

STATUTORY AUTHORITY: Public Chapter 980, Acts of 2018

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

FISCAL IMPACT: None

STAFF RULE ABSTRACT: Public Chapter 980 requires revisions to the Student Code of Conduct for The University of Tennessee at Martin.

The purposes of the revisions are to:

(1) Clarify that e-mail is an official method of communication used by the University about student conduct matters;
(2) Ensure that the student conduct process is carried out in a manner that is free from conflicts of interest consistent with due process of law and in cases involving allegations of sexual assault, dating violence, domestic violence, or stalking, must include protections for the accused student/respondent analogous to, and no less protective than, the conflict of interest provisions of Tennessee Code Annotated § 4-5-303;
(3) Ensure that in cases of sexual assault, dating violence, domestic violence, or stalking, at least seventy-two (72) hours prior to a hearing, the University shall provide the accused student/respondent with notice of the time, place, and date of the hearing; the name of each witness the University expects to present at the hearing and those the University may present if the need arises; notice of the right to request a copy of the University's investigative file, redacted in accordance with the Family Educational Rights and Privacy Act of 1974, (20 U.S.C. § 1232g), and the federal regulations implementing that statute, as amended; and notice of the right to request copies of all documents, copies of

all electronically stored information, and access to tangible evidence that the university has in its possession, custody, or control and may use to support claims or defenses, unless the use would be solely for impeachment; and

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

Regulatory Flexibility Addendum

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

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

Impact on Local Governments

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

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

Additional Information Required by Joint Government Operations Committee

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

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

Public Chapter 980 requires revisions to the Student Code of Conduct for The University of Tennessee at Martin.

The purposes of the revisions are to:

(1) Clarify that e-mail is an official method of official method of communication used by the University about student conduct matters;

(2) Ensure that the student conduct process is carried out in a manner that is free from conflicts of interest consistent with due process of law and in cases involving allegations of sexual assault, dating violence, domestic violence, or stalking, must include protections for the accused student/respondent analogous to, and no less protective than, the conflict of interest provisions of Tennessee Code Annotated § 4-5-303;

(3) Ensure that in cases of sexual assault, dating violence, domestic violation, or stalking, at least seventy-two (72) hours prior to a hearing, the University shall provide the accused student/respondent with notice of the time, place, and date of the hearing; the name of each witness the University expects to present at the hearing and those the University may present if the need arises; notice of the right to request a copy of the University's investigative file, redacted in accordance with the Family Educational Rights and Privacy Act of 1974, (20 U.S.C. § 1232g), and the federal regulations implementing that statute, as amended; and notice of the right to request copies of all documents, copies of all electronically stored information, and access to tangible evidence that the University has in its possession, custody, or control and may use to support claims or defenses, unless the use would be solely for impeachment; and

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

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

Public Chapter 980 (2018)

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

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

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

None

(E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two

percent (2%) of the agency's annual budget or five hundred thousand dollars ($500,000), whichever is less;

None

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

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;

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

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

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

Department of State
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For Department of State Use Only

Sequence Number: 06-30-18
Rule ID(s): 7139
File Date: 6/29/18
Effective Date: 9/27/18

Proposed Rule(s) Filing Form

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

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

Agency/Board/Commission:	The University of Tennessee (Martin)
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):
X 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-.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	**Penalties**	**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.

(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.

~~(28)~~(29) 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. 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) Engaging in retaliation.

1720-05-01-.05 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; 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 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 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 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, 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 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.

(7) Except for an interim suspension, disciplinary penalties shall not become effective until after opportunities for appeal have been exhausted. Penalties 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 in accordance with the University's Policy on Sexual Misconduct, Relationship Violence, and Stalking. In a case involving an allegation of

sexual misconduct, relationship violence, or stalking, 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. 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.

(8) For purposes of this rule, the term "student" shall mean a student or a student organization.

~~(1) 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.~~

~~(2) 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"). 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).~~

~~(3) 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.~~

~~(4) 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.

(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 guilty or not guilty. If a guilty 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 guilty plea has been entered, evidence in mitigation of the alleged offense shall be presented only after the Board has determined the issue of innocence or guilt.~~

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 guilt 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(4)(e). The Disciplinary Hearing Board may consider evidence introduced by the alleged victim as part of the University's proof.~~

~~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. In a case involving an allegation of sexual misconduct, relationship violence, or stalking, 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.~~

~~(5) 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.

(8) For purposes of this rule, the term "student" shall mean a student or a student organization.

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)
Governor Bill Haslam				X	
Commissioner Candace McQueen				X	
Commissioner Jai Templeton	X				
Dr. Joe DiPietro	X				
Charles C. Anderson, Jr.	X				
Shannon Brown				X	
George E. Cates	X				
Dr. Terrance G. Cooper	X				
Spruell Driver, Jr.	X				
Dr. William E. Evans				X	
John N. Foy	X				
Crawford Gallimore	X			X	
Vicky B. Gregg	X				
Raja J. Jubran	X				
Mike Krause (non-voting)				X	
Brad A. Lampley	X				
Dr. Beauvais Lyons (non-voting)					
Andrew P. McBride	X				
Sharon J. Pryse	X				
David A. Shepard	X				
John D. Tickle	X				
Charles Weber (non-voting)					
Julia T. Wells	X				
Charles E. Wharton	X				
Tommy G. Whittaker				X	

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

Date: June 28, 2018

Signature: _____

Name of Officer: Matthew Scoggins

Title of Officer: General Counsel

Subscribed and sworn to before me on: June 28, 2018

Notary Public Signature: Lynette Russell

My commission expires on: 12-4-18

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

Rule Chapter Number(s): 1720-05-01 Student Rights and Responsibilities

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

Herbert H. Slatery III
Attorney General and Reporter

6/29/2018
Date

Department of State Use Only

Filed with the Department of State on: 6/29/18

Effective on: 9/27/18

Tre Hargett
Secretary of State

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PUBLIC DOCS

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: University of Tennessee

DIVISION:

SUBJECT: Student Rights and Responsibilities

STATUTORY AUTHORITY: Public Chapter 980 (2018)

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

FISCAL IMPACT: None

STAFF RULE ABSTRACT: Public Chapter 980 requires revisions to the Student Code of Conduct for The University of Tennessee Health Science Center.

The purposes of the revisions are to:

(1) Clarify that e-mail is an official method of communication used by the University about student conduct matters;

(2) Ensure that the student conduct process is carried out in a manner that is free from conflicts of interest consistent with due process of law and in cases involving allegations of sexual assault, dating violence, domestic violence, or stalking, must include protections for the accused student/respondent analogous to, and no less protective than, the conflict of interest provisions of Tennessee Code Annotated § 4-5-303;

(3) Ensure that in cases of sexual assault, dating violence, domestic violation, or stalking, at least seventy-two (72) hours prior to a hearing, the University shall provide the accused student/respondent with notice of the time, place, and date of the hearing; the name of each witness the University expects to present at the hearing and those the University may present if the need arises; notice of the right to request a copy of the University's investigative file, redacted in accordance with the Family Educational Rights and Privacy Act of 1974, (20 U.S.C. § 1232g), and the

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

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

Regulatory Flexibility Addendum

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

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

Impact on Local Governments

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

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

Additional Information Required by Joint Government Operations Committee

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

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

Public Chapter 980 requires revisions to the Student Code of Conduct for The University of Tennessee Health Science Center.

The purposes of the revisions are to:

(1) Clarify that e-mail is an official method of official method of communication used by the University about student conduct matters;

(2) Ensure that the student conduct process is carried out in a manner that is free from conflicts of interest consistent with due process of law and in cases involving allegations of sexual assault, dating violence, domestic violence, or stalking, must include protections for the accused student/respondent analogous to, and no less protective than, the conflict of interest provisions of Tennessee Code Annotated § 4-5-303;

(3) Ensure that in cases of sexual assault, dating violence, domestic violation, or stalking, at least seventy-two (72) hours prior to a hearing, the University shall provide the accused student/respondent with notice of the time, place, and date of the hearing; the name of each witness the University expects to present at the hearing and those the University may present if the need arises; notice of the right to request a copy of the University's investigative file, redacted in accordance with the Family Educational Rights and Privacy Act of 1974, (20 U.S.C. § 1232g), and the federal regulations implementing that statute, as amended; and notice of the right to request copies of all documents, copies of all electronically stored information, and access to tangible evidence that the University has in its possession, custody, or control and may use to support claims or defenses, unless the use would be solely for impeachment; and

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

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

Public Chapter 980 (2018)

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

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

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

None

(E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two

percent (2%) of the agency's annual budget or five hundred thousand dollars ($500,000), whichever is less;

None

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

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;

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

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

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

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For Department of State Use Only

Sequence Number: 04-32-18
Rule ID(s): 7141
File Date: 4/29/18
Effective Date: 9/27/18

Proposed Rule(s) Filing Form

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

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

Agency/Board/Commission:	The University of Tennessee (Health Science Center)
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):
X 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-.08	Hearing Procedures

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	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.

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.

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.

(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). Efforts are made to keep penalties 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 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 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 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 imposed most commonly 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 maybe 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 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 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 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 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 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, 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 listed above may be imposed for any single violation of the Standards of Conduct.

(6) Except for an interim suspension, disciplinary penalties shall not become effective until after opportunities for appeal have been exhausted. Penalties 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.

1720-03-03-.06 NO CONTACT DIRECTIVES. 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.

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.

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 of the UT Health Science Center, 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 or, in the absence of applicable policies or procedures, by the Chancellor of the UT Health Science Center 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 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 in accordance with the University's Policy on Sexual Misconduct, Relationship Violence, and Stalking. In a case involving an allegation of sexual misconduct, relationship violence, or stalking, 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. 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.

(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) When, in the judgment of the Chancellor of the University of Tennessee, Health Science Center, conditions are such than 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 than will ensure the orderly functioning of the University and at the same time safeguard the basic rights of the students.

~~(1) Unless otherwise specified in the published policies and procedures of the UT Health Science Center, 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. § 4-5-108 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) Hearing Panel - 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 or, in the absence of applicable policies or procedures, by the Chancellor of the UT Health Science Center 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 or his/her designee upon the request of any party to a hearing.~~

~~(c) 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(1)(d).~~

(d) 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. In a case involving an allegation of sexual misconduct, relationship violence, or stalking, 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.

(2) The decision of any board or administrative officer of The University of Tennessee is subject to review by the Chancellor.

(3) For purposes of this rule, the term "student" shall mean a student or a student organization.

(4) When, in the judgment of the Chancellor of the University of Tennessee, Health Science Center, conditions are such than 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 than will ensure the orderly functioning of the University and at the same time safeguard the basic rights of the students.

1720-03-03-.09 STUDENT IDENTIFICATION CARDS.

(1) All currently registered students are required to have a UT Health Science Center Student 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

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 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.

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

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

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

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

Date: June 28, 2018

Signature:

Name of Officer: Matthew Scoggins

Title of Officer: General Counsel

Subscribed and sworn to before me on: June 28, 2018

Notary Public Signature: Lynette Russell

My commission expires on: 12-4-18

LYNETTE RUSSELL STATE OF TENNESSEE NOTARY PUBLIC

Agency/Board/Commission: The 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. Slatery III
Attorney General and Reporter

6/29/2018
Date

Department of State Use Only

Filed with the Department of State on: 6/29/18

Effective on: 9/27/18

Tre Hargett
Secretary of State

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PUBLIC DOCUMENTS

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	University of Tennessee
DIVISION:	
SUBJECT:	Student Code of Conduct
STATUTORY AUTHORITY:	Public Chapter 980 (2018)
EFFECTIVE DATES:	September 27, 2018 through June 30, 2019
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	Public Chapter 980 requires revisions to the Student Code of Conduct for The University of Tennessee at Chattanooga.

The purposes of the revisions are to:

(1) Clarify that e-mail is an official method of communication used by the University about student conduct matters;

(2) Ensure that the student conduct process is carried out in a manner that is free from conflicts of interest consistent with due process of law and in cases involving allegations of sexual assault, dating violence, domestic violence, or stalking, must include protections for the accused student/respondent analogous to, and no less protective than, the conflict of interest provisions of Tennessee Code Annotated § 4-5-303;

(3) Ensure that in cases of sexual assault, dating violence, domestic violation, or stalking, at least seventy-two (72) hours prior to a hearing, the University shall provide the accused student/respondent with notice of the time, place, and date of the hearing; the name of each witness the University expects to present at the hearing and those the University may present if the need arises; notice of the right to request a copy of the University's investigative file, redacted in accordance with the Family Educational Rights and Privacy Act of 1974, (20 U.S.C. § 1232g), and the

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

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

Regulatory Flexibility Addendum

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

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

Impact on Local Governments

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

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

Additional Information Required by Joint Government Operations Committee

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

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

Public Chapter 980 requires revisions to the Student Code of Conduct for The University of Tennessee at Chattanooga.

The purposes of the revisions are to:

(1) Clarify that e-mail is an official method of official method of communication used by the University about student conduct matters;

(2) Ensure that the student conduct process is carried out in a manner that is free from conflicts of interest consistent with due process of law and in cases involving allegations of sexual assault, dating violence, domestic violence, or stalking, must include protections for the accused student/respondent analogous to, and no less protective than, the conflict of interest provisions of Tennessee Code Annotated § 4-5-303;

(3) Ensure that in cases of sexual assault, dating violence, domestic violation, or stalking, at least seventy-two (72) hours prior to a hearing, the University shall provide the accused student/respondent with notice of the time, place, and date of the hearing; the name of each witness the University expects to present at the hearing and those the University may present if the need arises; notice of the right to request a copy of the University's investigative file, redacted in accordance with the Family Educational Rights and Privacy Act of 1974, (20 U.S.C. § 1232g), and the federal regulations implementing that statute, as amended; and notice of the right to request copies of all documents, copies of all electronically stored information, and access to tangible evidence that the University has in its possession, custody, or control and may use to support claims or defenses, unless the use would be solely for impeachment; and

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

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

Public Chapter 980 (2018)

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

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

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

None

(E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two

percent (2%) of the agency's annual budget or five hundred thousand dollars ($500,000), whichever is less;

None

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

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;

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

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

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

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Nashville, TN 37243
Phone: 615-741-2650
Email: publications.information@tn.gov

For Department of State Use Only

Sequence Number: 06-34-18
Rule ID(s): 7143
File Date: 6/29/18
Effective Date: 9/27/18

Proposed Rule(s) Filing Form

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

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

Agency/Board/Commission:	The University of Tennessee (Chattanooga)
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):
X 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-.02	Definitions
1720-02-05-.06	Due Process and Student Rights
1720-02-05-.07	Student Conduct Hearing Procedures

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.

(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"), 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.

(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. 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) The term "UAPA" means the Uniform Administrative Procedures Act, Tennessee Code Annotated § 4-5-101 et seq.

(30) 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:

(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.

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

(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) Complaints

(a) 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.

(b) All charges shall be presented to the accused student in written form.

(3) Hearing Options

(a) 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).

(b) 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.

(c) A requested hearing shall be scheduled promptly after receipt of the request.

(d) 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.

(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 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) Hearing Procedures – The Student Conduct Board or University Hearing Officer sitting alone will conduct the hearing within the following general guidelines:

(a) All University hearings shall be closed to the public.

(b) 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).

(c) 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 he limited.

(d) All procedural questions are determined by the University Hearing Officer.

(e) 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.

(f) The standard for a finding of responsible is a preponderance of the evidence.

(g) 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.

(h) An appropriate record will be made of the hearing procedures. Deliberations shall not be recorded. Defects in the record will not invalidate the proceedings.

(6) 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 1720-02-05-.06(4).

~~(1) Complaints~~

~~(a) 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.~~

~~(b) All charges shall be presented to the accused student in written form.~~

~~(2) Hearing Options~~

~~(c) 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).~~

~~(d) 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.~~

~~(e) A requested hearing shall be scheduled promptly after receipt of the request.~~

~~(f) 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. § 4-5-108 et seq.), 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) Hearing Procedures -- The Student Conduct Board or University Hearing Officer sitting alone will conduct the hearing within the following general guidelines:~~

~~(g) All University hearings shall be closed to the public.~~

~~(h) 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).~~

~~(i) 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.~~

~~(j) All procedural questions are determined by the University Hearing Officer.~~

~~(k) 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.~~

~~(l) The standard for a finding of responsible is a preponderance of the evidence.~~

~~(m) 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.~~

~~(n) An appropriate record will be made of the hearing procedures. Deliberations shall not be recorded. Defects in the record will not invalidate the proceedings.~~

~~(4) 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:

(a) Warning. A notice that the student is violating or has violated the Standards of Conduct.

(b) 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).

(c) 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.

(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 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.

(f) 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.

(g) 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.

(h) 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.

(i) 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:

(a) Warning. A notice that the student organization is violating or has violated the Standards of Conduct.

(b) 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.

(c) 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.

(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 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.

(f) 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:

(a) A statement that he/she appeals the decision;

(b) 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:

(a) Uphold the decision;

(b) Amend the decision;

(c) Return the case for reconsideration; or

(d) 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.

(a) 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.

(b) 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".

(c) 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)
Governor Bill Haslam				X	
Commissioner Candace McQueen				X	
Commissioner Jai Templeton	X				
Dr. Joe DiPietro	X				
Charles C. Anderson, Jr.	X				
Shannon Brown				X	
George E. Cates	X				
Dr. Terrance G. Cooper	X				
Spruell Driver, Jr.	X				
Dr. William E. Evans				X	
John N. Foy	X				
Crawford Gallimore	X			X	
Vicky B. Gregg	X				
Raja J. Jubran	X				
Mike Krause (non-voting)				X	
Brad A. Lampley	X				
Dr. Beauvais Lyons (non-voting)					
Andrew P. McBride	X				

Sharon J. Pryse	X				
David A. Shepard	X				
John D. Tickle	X				
Charles Weber (non-voting)					
Julia T. Wells	X				
Charles E. Wharton	X				
Tommy G. Whittaker				X	

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

Date: June 28, 2018

Signature:

Name of Officer: Matthew Scoggins

Title of Officer: General Counsel

Subscribed and sworn to before me on: June 28, 2018

Notary Public Signature: Lynette Russell

My commission expires on: 12-4-18

LYNETTE RUSSELL STATE OF TENNESSEE NOTARY PUBLIC KNOX COUNTY

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

Rule Chapter Number(s): 1720-02-05 Student 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. Slatery III
Attorney General and Reporter

6/29/2018
Date

Department of State Use Only

Filed with the Department of State on: 6/29/18

Effective on: 9/27/18

Tre Hargett
Secretary of State

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PUBLIC PUBLICATIONS

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: University of Tennessee

DIVISION:

SUBJECT: Student Code of Conduct

STATUTORY AUTHORITY: Public Chapter 980 (2018)

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

FISCAL IMPACT: None

STAFF RULE ABSTRACT: Public Chapter 980 requires revisions to the student code of conduct for The University of Tennessee, Knoxville (UTK). UTK has revised its student code of conduct to:

(1) Ensure that the student conduct process is carried out in a manner that is free from conflicts of interest consistent with due process of law and in cases involving allegations of sexual assault, dating violence, domestic violence, or stalking, must include protections for the accused student/respondent analogous to, and no less protective than, the conflict of interest provisions of Tennessee Code Annotated § 4-5-303;

(2) Ensure that in cases of sexual assault, dating violence, domestic violation, or stalking, at least seventy-two (72) hours prior to a hearing, the University shall provide the accused student/respondent with notice of the time, place, and date of the hearing; the name of each witness the University expects to present at the hearing and those the University may present if the need arises; notice of the right to request a copy of the University's investigative file, redacted in accordance with the Family Educational Rights and Privacy Act of 1974, (20 U.S.C. § 1232g), and the federal regulations implementing that statute, as amended; and notice of the right to request copies of all documents, copies of all electronically stored information, and access to tangible evidence that the University has in its possession, custody, or control and may use to support

claims or defenses, unless the use would be solely for impeachment; and

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

Other revisions: (1) improve the clarity of the student conduct process in the areas of resolution agreements and alternative resolutions; (2) clarify that students who are given a deferred suspension also receive disciplinary probation; (3) add an administrative sanction option of deferred suspension for student organizations; and (4) clarify the disclosure of records for a student who is still enrolled in the University but applying for post-graduation employment or graduate school.

Regulatory Flexibility Addendum

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

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

Impact on Local Governments

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

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

Additional Information Required by Joint Government Operations Committee

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

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

Public Chapter 980 requires revisions to the student code of conduct for The University of Tennessee, Knoxville (UTK). UTK has revised its student code of conduct to:

(1) Ensure that the student conduct process is carried out in a manner that is free from conflicts of interest consistent with due process of law and in cases involving allegations of sexual assault, dating violence, domestic violence, or stalking, must include protections for the accused student/respondent analogous to, and no less protective than, the conflict of interest provisions of Tennessee Code Annotated § 4-5-303;

(2) Ensure that in cases of sexual assault, dating violence, domestic violation, or stalking, at least seventy-two (72) hours prior to a hearing, the University shall provide the accused student/respondent with notice of the time, place, and date of the hearing; the name of each witness the University expects to present at the hearing and those the University may present if the need arises; notice of the right to request a copy of the University's investigative file, redacted in accordance with the Family Educational Rights and Privacy Act of 1974, (20 U.S.C. § 1232g), and the federal regulations implementing that statute, as amended; and notice of the right to request copies of all documents, copies of all electronically stored information, and access to tangible evidence that the University has in its possession, custody, or control and may use to support claims or defenses, unless the use would be solely for impeachment; and

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

Other revisions: (1) improve the clarity of the student conduct process in the areas of resolution agreements and alternative resolutions; (2) clarify that students who are given a deferred suspension also receive disciplinary probation; (3) add an administrative sanction option of deferred suspension for student organizations; and (4) clarify the disclosure of records for a student who is still enrolled in the University but applying for post-graduation employment or graduate school.

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

Public Chapter 980 (2018)

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

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

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

None

(E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate

is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars ($500,000), whichever is less;

None

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

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

Matthew Scoggins
General Counsel
The University of Tennessee

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

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

Matthew Scoggins
General Counsel
The University of Tennessee

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

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

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

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

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For Department of State Use Only

Sequence Number: 06-36-18
Rule ID(s): 7145
File Date: 6/29/18
Effective Date: 9/27/18

Proposed Rule(s) Filing Form

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

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

Agency/Board/Commission:	The University of Tennessee (Knoxville)
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):
X 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**
1720-04-03	Student Code of Conduct
Rule Number	**Rule Title**
1720-04-03-.06	Student Conduct Process: Initial Stages
1720-04-03-.07	Student Conduct Process: Resolutions
1720-04-03-.08	Student Conduct Board: Hearings and Appeals
1720-04-03-.09	Sanctions
1720-04-03-.13	Retention, Disclosure, and Expungement of Student Disciplinary Records

RULES
OF
THE UNIVERSITY OF TENNESSEE
(KNOXVILLE)

CHAPTER 1720-04-03
STUDENT CODE OF CONDUCT

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

1720-04-03-.01 PREAMBLE.

(1) Students at the University of Tennessee are members of both the University community and the larger community of which the University is a part. Accordingly, students are responsible for conducting themselves in a lawful manner as well as in compliance with University rules and policies. In addition, the University has developed a set of aspirational goals titled, Principles of Civility and Community, which encourages all members of the University community to foster a learning environment where diversity is valued, respected, and celebrated.

(2) The University has established the Student Code of Conduct ("Code") in order to advance the mission of the University and sustain a culture of excellence by: maintaining a safe learning environment; requiring students to conduct themselves in ways that allow for their personal growth and development as well as others, in the most positive manner possible; protecting the rights and privileges of all members of the University community; providing a basis for orderly conduct of the affairs of the University; promoting a positive relationship between the University and its surrounding community; preserving the University's reputation and property; encouraging students to engage in conduct that brings credit to themselves and the University; and ensuring that each student who matriculates at the University graduates ready to contribute to society as an ethical and law-abiding citizen.

(3) The University's behavioral standards are set forth in the Code's Standards of Conduct (Section .04). Students who engage in conduct that is inconsistent with the Standards of Conduct are subject to University disciplinary action. The process by which the University investigates and resolves alleged violations of the Standards of Conduct is called the student conduct process. The student conduct process resolves allegations of misconduct but also is an educational process designed to promote learning and development as it relates to appropriate decision making. The student conduct process is consistent, fair, and provides means of resolution that are commensurate with the skills and abilities of the participants in the process.

(4) The effectiveness of the student conduct process rests partially upon the participation of all members of the University community. Active participation in the process by students, faculty, and staff reflects a willingness to address the difficult issues brought before them for the betterment of individual students and the University community. This involvement is vital to the establishment of true community standards.

(5) Authority and responsibility relating to the Code are delegated to the Vice Chancellor for Student Life, who has delegated certain authority and responsibility to the Office of Student Conduct and Community Standards ("SCCS").

(6) The University is committed to respecting students' constitutional rights. The Code shall be interpreted in a way that does not violate students' constitutional rights, including, without limitation, the rights protected by the First Amendment to the United States Constitution.

(7) Students are responsible for being fully acquainted with and for complying with the Code, the applicable undergraduate or graduate catalog, the student handbook (Hilltopics), and other rules and policies relating to students.

1720-04-03-.02 JURISDICTION.

(1) Geographical Limits. The Code applies to conduct that occurs on University-controlled property. However, with respect to conduct that occurs off of University-controlled property, the University has the discretion under the Code to discipline a student for conduct that violates the Standards of Conduct only if the student's conduct: (1) occurs in connection with a University-affiliated activity including, without limitation, an overseas study program or a clinical, field, internship, or in-service experience; (2) consists of academic dishonesty or research misconduct; (3) is prohibited by local, state, or federal law, and the conduct was committed within the Knoxville Area (or, for UTSI students, the conduct was committed within Coffee County or Franklin County); (4) is fairly attributable to a student organization based on a consideration of the criteria in Section .02(4); (5) is committed against another member of the University community; or (6) threatens, or indicates that the student poses a threat to, the health, safety, or welfare of others or the security of any person's property including, without limitation, drug-related offenses, arson, assault, fraud, hazing, participation in group violence, sexual misconduct, relationship violence, stalking, and theft.

(2) Professional and Ethical Standards. Graduate or professional programs within the University may take separate and independent academic action against students for alleged violations of professional and/or ethical standards using procedures other than those contained in the Code.

(3) Responsibility for Conduct. Each student shall be responsible for his/her conduct from the time of application for admission through the actual awarding of a degree, even though conduct may occur before classes begin or after classes end, as well as during the academic year and during periods between terms of actual enrollment (and even if his/her conduct is not discovered until after a degree is awarded).

(4) Student Organizations' Responsibility for Violations of the Standards of Conduct. Notwithstanding anything in the Code to the contrary, a student organization may be found responsible for conduct that violates the Standards of Conduct only if the conduct is fairly attributable to the student organization. Whether conduct is fairly attributable to the student organization will be determined by SCCS based on a totality of the following

criteria:

(a) Whether the misconduct was endorsed by one (1) or more officers of the student organization ("endorsed by" means: having prior knowledge that the misconduct was reasonably likely to occur and failing to take reasonable preventative or corrective action; failing to attempt to stop known misconduct while it is occurring; and/or helping to plan, promote, or carry out the misconduct);

(b) Whether the misconduct occurred in connection with an activity:

1. Financed by the student organization and/or one (1) or more members or alumni of the student organization who contributed personal funds in lieu of organizational funds;

2. Related to initiation into, admission into, affiliation with, or as a condition for continued membership in the student organization; and/or

3. Advertised, promoted, or publicized in such a way that a reasonable student viewing or hearing the advertisement, promotion, or publication would believe that the activity was affiliated with the student organization.

(c) Whether the misconduct occurred on property owned, controlled, rented, leased, and/or used by the student organization and/or any of its members/alumni acting on the student organization's behalf; and/or

(d) Whether a member of the student organization attempted to conceal the activity connected with the misconduct or conceal the misconduct of another member of the student organization.

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

(1) Independent Action. The Code has been adopted in furtherance of the University's interests and serves to supplement, rather than substitute for, the enforcement of civil and criminal law. Accordingly, University disciplinary action may be instituted against a student whose conduct potentially violates both criminal law and the Standards of Conduct without regard to the pending status of criminal charges or civil litigation. At the discretion of SCCS, disciplinary action relating to a violation of the Standards of Conduct may be carried out prior to, simultaneously with, or following criminal proceedings. Students alleged to have violated the Standards of Conduct may not challenge any aspect of the University's student conduct process on the grounds that criminal charges, civil litigation, or other University proceedings regarding the same incident are pending or have been terminated, dismissed, reduced, or have not yet been adjudicated.

(2) University's Interaction with Other Entities. The University will cooperate with law enforcement and other government agencies in the enforcement of criminal law on University-controlled property and in the conditions imposed by criminal courts for the rehabilitation of students who have violated the criminal law.

(3) Withdrawals. If a Respondent voluntarily withdraws from the University before the conclusion of the student conduct process, SCCS retains the right to investigate and resolve the allegations made against the Respondent as a condition of the Respondent being allowed to re-enroll in the University. A disciplinary hold may remain in place or be implemented after the student withdraws in order to enforce this Section .03(3).

(4) Time Extensions and Rescheduling. Any time period described in the Code may be extended for good cause at the discretion of SCCS. Any meeting or hearing described in the Code may be rescheduled for good cause at the discretion of SCCS.

(5) Voluntary Impairment. A student's voluntary impairment to themselves resulting from the use and/or consumption of alcohol, drugs, chemicals, and/or other substances does not excuse or diminish a violation of the Code, except as provided in Section .11 (Policy on Amnesty for Individual Good Samaritans and Students in Need of Emergency Medical Attention).

(6) Other Rights – Sexual Misconduct, Relationship Violence, Stalking, or Retaliation. In addition to rights granted in the Code, in cases involving an allegation of sexual misconduct, relationship violence, stalking, or retaliation, the Complainant and the Respondent shall have the rights outlined in the University's policies and procedures for investigating and resolving complaints of sexual misconduct, relationship violence, stalking, or retaliation in accordance with Title IX of the Education Amendments of 1972, the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, and other applicable law.

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

(1) Academic Dishonesty. Cheating, plagiarism, or any other act of academic dishonesty, including, without limitation, an act in violation of the Honor Statement.

(2) False Information. Providing false information to a University official.

(3) Misuse of Information in Connection with University Investigation or Hearing. Falsifying, distorting, misrepresenting, or withholding information in connection with a University investigation or hearing, except as provided in Section .05(1)(i).

(4) Misconduct Relating to Records or Identification. Forging, altering, destroying, falsifying, or misusing records or identification, whether in print or electronic form.

(5) Harm to Others. Causing physical harm to any person; endangering the health, safety, or welfare of any person; engaging in conduct that causes a reasonable person to fear harm to his/her health or safety; or making an oral or written statement that an objectively reasonable person hearing or reading the statement would interpret as a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals.

(6) Harassment. Unwelcome conduct that is so severe or pervasive, and objectively offensive, that it substantially interferes with the ability of a person to work, learn, live, or participate in or benefit from the services, activities, or privileges provided by the University. In no event shall this rule be construed to discipline a student for speech protected by the First Amendment to the United States Constitution (e.g., mere insulting or offensive speech).

(7) Sexual Misconduct, Relationship Violence, Stalking, and/or Retaliation. Violating the University's Policy on Sexual Misconduct, Relationship Violence, Stalking, and/or Retaliation.

(8) Invasion of Privacy. Invasion of another person's privacy when that person has a reasonable expectation of privacy, including, without limitation, using electronic or other means to make a video or photographic record of any person in a location in which the person has a reasonable expectation of privacy, without the person's knowledge or consent. This includes, but is not limited to, making a video or photographic record of a person in shower/locker rooms or restrooms. The storing, sharing, and/or distributing of such nonconsensual recordings by any means is also prohibited.

(9) Private or Public Property. Any of the following conduct with respect to private or public property, including, without limitation, University-controlled property: theft; misappropriation; unauthorized possession, use, sale, duplication, or entry; vandalism; destruction; damage; or conduct that is reasonably likely to cause damage.

(10) Hazing. Any intentional or reckless act, on or off University-controlled property, by one (1) student, acting alone or with others, which is directed against any other student, which endangers the mental or physical health, safety, or welfare of that student, or which induces or coerces a student to endanger his or her mental or physical health, safety, or welfare. "Hazing" does not include customary athletic events or similar contests or competitions and is limited to those actions taken and situations created in connection with initiation into or affiliation with any organization.

(11) Disorderly Conduct. Fighting or other physically violent or physically threatening conduct; creating a hazardous or physically offensive condition by any act that serves no legitimate purpose; making noise that could unreasonably disturb others who are carrying on lawful activities; or conduct that breaches the peace.

(12) Lewd, Indecent, or Obscene Conduct. Engaging in lewd, indecent, or obscene conduct, including, without limitation, public exposure of one's sexual organs, public urinating, and public sexual acts.

(13) Imminent Lawless Action. Engaging in speech either orally or in writing that is directed to inciting or producing imminent lawless action and is likely to incite or produce such action.

(14) Fire Safety. Any act of arson; falsely reporting a fire, the presence of an explosive or incendiary device, or other emergency; setting off a false fire alarm; or tampering with, removing, or damaging fire alarms, fire extinguishers or any other safety or emergency equipment from its proper location except when removed in a situation in which there is a reasonable belief of the need for such equipment.

(15) University Keys, Access Cards, and Identification. Possessing, using, or duplicating University keys, University access cards, or University identification cards without authorization from the University.

(16) Information Technology. Theft, misuse, or unauthorized use of information technology facilities, resources, or access codes, including, without limitation: unauthorized entry into or transfer of a file; using another person's identification and/or password without that person's consent; using information technology facilities or resources to interfere with the work of another student, faculty member, staff member, or other member of the University community; using information technology facilities or resources to interfere with normal operation of a University information technology system or network; circumventing University information technology system or network security; using information technology facilities or resources in violation of copyright laws; falsifying an e-mail

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

(17) Weapons. Possessing, carrying, using, storing, or manufacturing any weapon on University-controlled property or in connection with a University-affiliated activity, unless authorized in writing by the Chief of Police or his/her designee or unless federal or state law affirmatively gives a student a right, irrespective of the Code, to possess or carry a weapon on University-controlled property or in connection with a University-affiliated activity.

(18) Alcohol-Related Conduct – University Property or University Activities. Consuming, manufacturing, possessing, distributing, dispensing, selling, or being under the influence of alcoholic beverages on University-controlled property or in connection with a University-affiliated activity unless expressly permitted by University policy.

(19) Alcohol-Related Conduct Prohibited by Law. Consuming, manufacturing, possessing, distributing, dispensing, selling, or being under the influence of alcoholic beverages, if prohibited by federal, state, or local law.

(20) Providing Alcohol to Underage Person. Providing an alcoholic beverage to a person younger than twenty-one (21) years of age, unless permitted by law.

(21) Drugs and Drug Paraphernalia. Using, manufacturing, possessing, distributing, selling, dispensing, or being under the influence of drugs, if prohibited by federal, state, or local law; using, manufacturing, possessing, distributing, or selling drug paraphernalia, if prohibited by federal, state, or local law; using or possessing a prescription drug if the prescription was not issued to the student; or distributing or selling a prescription drug to a person to whom the prescription was not originally issued.

(22) Failure to Fulfill a University Financial Obligation. Failing to timely fulfill a University bill, account, or other financial obligation owed to the University.

(23) Failure to Respond, Comply, or Identify. Failing to respond to a request to report to a University administrative office; failing to comply with a lawful directive of a University employee or other public official acting within the scope of his/her duties, except as provided in Section .05(1)(i); or failing to identify oneself to a University employee or other public official acting within the scope of his/her duties when requested to do so.

(24) Failure to Appear. Failing to appear at a University hearing, including, without limitation, a hearing of a University conduct board, following a request to appear either as a party or as a witness.

(25) Violation of Interim Administrative Actions, Disciplinary Sanctions, or Conditions of Re-Enrollment. Violating the terms of a no-contact directive, an interim restriction, a disciplinary sanction, or a condition of re-enrollment imposed by the University.

(26) Obstruction or Disruption of University Activity. Obstructing or disrupting teaching, learning, studying, research, public service, administration, disciplinary proceedings, emergency services, or any other University-affiliated activity, or the free flow of pedestrian or vehicular traffic on University-controlled property. In no event shall this rule be construed to discipline a student for speech protected by the First Amendment to the United States Constitution.

(27) Violation of University Policy or Rule. Violating a University policy or rule, including, without limitation, University policies or rules relating to facilities' use, smoking, the acceptable use of information technology resources, research misconduct, finder's fees relating to clinical investigations involving human subjects or access to University data or materials, University libraries, dining services, parking or transportation, University identification card use, sexual harassment, residence halls, and registered student organizations.

(28) Act Prohibited by Law. Committing an act that is prohibited by local, state, or federal law.

(29) Attempted Violation; Accessory to Violation. Attempting to commit a violation of a Standard of Conduct or being an accessory to the commission of an act or attempted act in violation of a Standard of Conduct.

(30) Retaliation. Engaging in retaliation. Retaliation is an act or omission committed by a student because of another person's participation in a protected activity that would discourage a reasonable person from engaging in protected activity. Retaliation violates the Standards of Conduct regardless of whether the underlying allegation of a violation of the Standards of Conduct is ultimately found to have merit. Retaliation can include, without limitation: (1) an act or omission committed against a person's family, friends, advisors, and/or other persons reasonably expected to provide information in connection with a University investigation or hearing; and (2) an act or omission committed by a student through a third party.

1720-04-03-.05 FUNDAMENTAL RIGHTS.

(1) Rights of the Respondent. The following summarizes the rights granted to a Respondent in the student conduct process:

(a) Right to be assisted by an Advisor during all stages of the student conduct process, in accordance with Section .05(3);

(b) Right to an opportunity for an Educational Conference, in accordance with Section .06(6);

(c) Right to resolve allegations of misconduct and/or sanctions through a Formal Hearing, in accordance with Section .07(2);

(d) Right to receive notice of meetings and hearings at which the Respondent may be present and receive access to records used during those meetings and hearings, as provided in the Code;

(e) Right to the presumption of innocence (i.e., the Conduct Officer bears the burden of presenting information demonstrating that it is more likely than not that the Respondent violated a Standard of Conduct, as alleged in the Notice of Allegations);

(f) Right to not be directly questioned in a hearing by anyone other than the Student Life Hearing Officer or the Chairperson of the Student Conduct Board ("SCB");

(g) Right to challenge the fairness and/or impartiality of a Student Life Hearing Officer, a member of the SCB, or a member of the Appellate Board;

(h) Right to have a SCB Hearing conducted in accordance with Section .08, including, without limitation, the right to present information to the SCB, the right to propose questions for the Chairperson to ask witnesses, the right to request that information be excluded from the SCB's consideration, and the right to make a closing statement;

(i) Right to refrain from presenting information and witnesses during a hearing before the Student Life Hearing Officer or the SCB, and the right to not have the Student Life Hearing Officer or SCB draw an inference adverse to the Respondent if the Respondent chooses not to present information or witnesses;

(j) Right to Notice of Decision of the SCB, in accordance with Section .08(5);

(k) Right to appeal the decisions of the SCB that are contained in the Notice of Decision, in accordance with Section .08(6);

(l) Right to receive a copy of a notice of an initial, interim, or final decision, or a change in such a decision, issued by the Vice Chancellor for Student Life, SCCS, a Student Life Hearing Officer, the SCB, and/or the Appellate Board (e.g., Notice of Allegations, Notice of Decision, Notice of Final Decision), simultaneously with the Complainant's receipt of a copy of the notice of the decision; and

(m) Right to appeal a decision issued by SCCS, a Student Life Hearing Officer, and/or the SCB, and receive a notice containing information about the right to appeal simultaneously with the Complainant's receipt of a notice of such information, in accordance with Section .07 and Section .08.

(2) Rights of the Complainant.

(a) A Complainant shall be granted equivalent rights to the rights granted to a Respondent under the Code including, without limitation:

1. Right to meet with SCCS to ask questions and receive information about the student conduct process, including, without limitation, the status of an investigation;

2. Right to receive notice of meetings and hearings at which the Complainant may be present and receive access to records used during those meetings and hearings, as provided in the Code;

3. Right to be assisted by an Advisor during all stages of the student conduct process, in accordance with Section .05(3);

4. Right to present information and witnesses during meetings and hearings, including, without limitation, investigations, or hearings before a Student Life Hearing Officer, and SCB Hearings;

5. Right to not be directly questioned in a hearing by anyone other than the Student Life Hearing Officer or the Chairperson of the Student Conduct Board ("SCB");

6. Right to challenge the fairness and/or impartiality of a Student Life Hearing Officer, a member of the SCB, or a member of the Appellate Board;

7. Right to receive a copy of a notice of an initial, interim, or final decision, or a change in such a decision, issued by the Vice Chancellor for Student Life, SCCS, a Student Life Hearing Officer, the SCB, and/or the Appellate Board (e.g., Notice of Allegations, Notice of Decision, Notice of Final Decision), simultaneously with the Respondent's receipt of a copy of the notice of the decision;

8. Right to appeal a decision issued by SCCS, a Student Life Hearing Officer, and/or the SCB, and receive a notice containing information about the right to appeal simultaneously with the Complainant's receipt of a notice of such information, in accordance with Section .07 and Section .08; and/or

9. Right to otherwise participate in the student conduct process.

(b) Notwithstanding any provision of the Code to the contrary, including, without limitation, this Section .05(2), a Complainant shall not have the right to attend a meeting or hearing, receive information concerning, or otherwise participate in the student conduct process if such attendance, receipt of information, or participation would violate state or federal law.

(3) Right to an Advisor. The Complainant and the Respondent may choose to be assisted by one (1) Advisor during all stages of the student conduct process.

(a) Selection of an Advisor. SCCS encourages a Complainant or a Respondent who chooses to be assisted by an Advisor to consider selecting a University employee who has received training from SCCS about the student conduct process. The Complainant and the Respondent may obtain the names of trained advisors from SCCS. At their own expense, the Complainant and the Respondent may choose a person who is not employed by the University to serve as an Advisor (e.g., friend, attorney). The Complainant and the Respondent should select as an Advisor a person whose schedule allows attendance at the scheduled date, time, and place for meetings and hearings scheduled by SCCS because meeting and hearing delays generally will not be granted due to the scheduling conflicts of an Advisor.

(b) Role of an Advisor. The role of an Advisor is limited to assisting, advising, and/or supporting a Complainant or Respondent during the student conduct process. An Advisor is not permitted to speak for or on behalf of a Complainant or Respondent, appear in lieu of a Complainant or Respondent, participate as a witness, or participate directly in any other manner during any phase of the student conduct process, including without limitation, a SCB Hearing. However, in a UAPA Hearing, the Complainant and the Respondent are entitled to have an attorney advocate on their behalf.

(4) Notification of the Right to Have an Advisor. SCCS shall provide written notice to the Complainant and the Respondent of their rights to an Advisor. The notice shall contain an explanation of the role of an Advisor during the student conduct process.

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

(1) Receipt and Review of Allegations of Misconduct. SCCS may initiate the student conduct process on the basis of written allegations received from any source, including, without limitation, a student, a faculty member, a University housing employee, or a law enforcement agency. SCCS also may initiate the student conduct process in the absence of written allegations if SCCS becomes aware, through other means, of potential misconduct committed by a student. Upon receipt of written allegations or other information concerning potential student misconduct, SCCS will review the information and determine whether to initiate the student conduct process. SCCS's determination of whether to initiate the student conduct process generally will be based on: the preliminary investigation by SCCS or other University official(s), if any, into the allegations received by SCCS; SCCS's determination of whether the alleged conduct falls within the jurisdiction of the Code; and SCCS's determination of whether the alleged conduct, if true, violated the Standards of Conduct.

(2) Investigation of Allegations of Misconduct. SCCS may investigate the allegations against the Respondent by interviewing witnesses and obtaining other information. SCCS is not obligated to interview a witness identified by the Respondent or the Complainant if SCCS believes the witness is not likely to possess relevant information, is not likely to lead SCCS to the discovery of relevant information, or the information the witness is likely to possess is cumulative of other information gathered by SCCS. SCCS may re-interview the Complainant, the Respondent, and/or any other person at any time during the investigation in order to obtain additional and/or clarifying information. Investigations conducted by SCCS will be prompt, thorough, and equitable. In conducting an investigation, SCCS will act as a fair and impartial party rather than a representative of the person, office, unit, organization, or entity that submitted the allegations to SCCS. Parts of SCCS's investigation may occur before, during, and/or after the Educational Conference (Section .06(6)) and/or any other part of the student conduct process. At the conclusion of its investigation, SCCS may prepare a written report of the findings of the investigation. The report may include an assessment of the credibility of persons interviewed during the investigation and an assessment of whether it is more likely than not that the Respondent violated the Standards of Conduct. SCCS may delegate the investigation of certain types of allegations to other University offices in accordance with University policy (e.g., research misconduct; sexual misconduct, relationship violence, stalking, and retaliation).

(3) ~~Fairness and Impartiality~~Conflicts of Interest.

(a) The student conduct process must be carried out in a manner that is free from conflicts of interest consistent with due process of law.

(b) A University employee shall not act on behalf of SCCS in the student conduct process in any case in which: (1) the employee is a Complainant or a witness; or (2) the employee determines, for any other reason (e.g., personal prejudice or bias), that he/she cannot be fair or impartial.

(c) In cases involving allegations of sexual assault, dating violence, domestic violence, or stalking, the student conduct process must include protections for the Respondent analogous to, and no less protective than, the conflict of interest provisions of Tennessee Code Annotated § 4-5-303. Notwithstanding the preceding sentence: (1) an attorney for the University is allowed to provide legal advice to multiple University employees who serve in different roles in the

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

~~(3)~~(4) Interim Administrative Actions.

(a) General. In certain situations, the University may impose interim administrative actions prior to the conclusion of the student conduct process. The University shall determine the appropriate interim administrative actions based on the totality of the circumstances. Examples of interim administrative actions include, without limitation, a no-contact directive (Section .06(4)(b)), a disciplinary hold (Section .06(4)(c)), and interim restrictions (Section .06(4)(d)).

(b) No-Contact Directive. In cases involving allegations of assault, injury, sexual misconduct, relationship violence, stalking, retaliation or in other cases where there is reason to believe continued contact between a student and specific persons may interfere with those persons' security, safety or ability to participate effectively in work or studies, the University may issue a written instruction to a student, called a no-contact directive, that prohibits a student from having verbal, physical, written, and/or electronic contact with specific other persons for a definite or indefinite period of time. A no-contact directive also may prohibit a student from being present on designated University-controlled property. Any student, faculty or staff member or other person with a reasonable justification may request that a no-contact directive be issued to a student.

(c) Disciplinary Hold. The Respondent's academic record (including, without limitation, the release of the Respondent's official or unofficial transcript), degree, ability to register for classes, and/or ability to re-enroll may be placed on disciplinary hold by SCCS or by another appropriate University office at the request of SCCS for the following reasons: (1) to require the Respondent to participate in the student conduct process (SCCS will release the hold after the Respondent attends the Educational Conference but may reinitiate the hold in order to require the Respondent to participate in other parts of the student conduct process); or (2) to require the Respondent to satisfy the terms and conditions of disciplinary sanctions received (the hold shall be released after the terms and conditions have been satisfied). No diploma shall be given and no grades, academic credit, or degree shall be awarded to a student who has been placed on disciplinary hold.

(d) Interim Restrictions. Generally, the status of a student alleged to have violated the Standards of Conduct is not affected until the conclusion of the student conduct process (Section .07(4)). However, the Vice Chancellor for Student Life may impose interim restrictions prior to the conclusion of the student conduct process related to the alleged misconduct when the Vice Chancellor for Student Life has reasonable cause to believe that (1) a Respondent's continued presence on University-controlled property or at University-affiliated activities poses a significant risk of substantial harm to the health, safety, or welfare of others or to property or (2) poses an imminent or ongoing threat to the disruption of, or interference with, the normal operations of the University. Interim restrictions shall be confirmed by notice to the Respondent that explains the basis for the interim restrictions and shall remain in effect until the conclusion of the student conduct process, which should be completed without undue delay. Within three (3) days of the imposition of the interim restrictions, the Respondent shall be

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

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

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

(a) Scope of the Educational Conference. The Educational Conference is a meeting between SCCS and the Respondent in which the following generally occurs:

1. SCCS orally informs the Respondent about the allegations made against the Respondent and, if requested by the Respondent, provides the Respondent with a reasonable opportunity to review the written allegations, if any, received by SCCS.

2. SCCS provides the Respondent with an opportunity to respond to the allegations, including, without limitation, an opportunity to present information to SCCS concerning the allegations and identify witnesses whom the Respondent believes SCCS should interview to obtain additional information.

3. Both SCCS and the Respondent may ask questions to each other and seek clarifying information about the allegations, the possible sanction(s), and the student conduct process.

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

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

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

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

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

(1) Resolution by Agreement.

(a) Purpose and Effects of a Resolution Agreement. At any time during the student conduct process, a Respondent may resolve allegations of misconduct by signing a Resolution Agreement proposed by SCCS. By signing a Resolution Agreement, the Respondent: (1) accepts responsibility for violating the Standards of Conduct~~, as alleged by SCCS~~; (2) agrees to the imposition of the sanction(s) ~~proposed by SCCS~~; and (3) waives all rights the Respondent may have to resolve the allegations through a Formal Hearing. A Resolution Agreement is not valid until it is signed by both the Respondent and SCCS.

(b) Revocation or Appeal of a Resolution Agreement. The Respondent may not revoke or appeal a Resolution Agreement signed by the Respondent.

(c) Resolution Agreement - Sexual Misconduct, Relationship Violence, Stalking, or Retaliation. ~~After SCCS receives a Resolution Agreement signed by the Respondent ~~In a case involving sexual misconduct, relationship violence, stalking, or retaliation, SCCS will notify the Complainant about the proposed Resolution Agreement in writing and provide the Complainant with the opportunity to object to the ~~sanction~~ proposed ~~by SCCS in the~~ Resolution Agreement. A Complainant must notify SCCS of his/her objection in writing within five (5) business days from the date that SCCS informs the Complainant about the proposed Resolution Agreement. If the Complainant timely informs SCCS of his/her objection, then SCCS may address the Complainant's objection by modifying the ~~sanction in a way~~proposed Resolution Agreement that is agreeable to both the Respondent and the Complainant and having the Respondent sign the modified Resolution Agreement. Otherwise, SCCS will continue the student conduct process and resolve the allegations against the Respondent in accordance with the Code. ~~Nothing in this Section .07(1) shall be construed to permit SCCS to conduct mediation in a case involving allegations of sexual assault.~~

(d) Resolution Agreement – Academic Dishonesty. In order to resolve an allegation that the Respondent violated Section .04(1) (academic dishonesty) through a Resolution Agreement, the Respondent shall agree to the imposition of the instructor's academic penalty in addition to agreeing to the other requirements contained in Section .07(1)(a).

(2) Resolution by Formal Hearing.

(a) Types of Formal Hearings. A Formal Hearing is a process through which a Respondent has a right to contest allegations of misconduct and/or the sanctions proposed by SCCS by presenting information (including, without limitation, witnesses) to a decision maker other than the University employee(s) who conducted the investigation and/or Educational Conference. The Code provides for three types of Formal Hearings, depending on the gravity of the disciplinary sanctions that have been proposed by SCCS:

1. A hearing before a Student Life Hearing Officer, which is described in Section .07(2)(d);

2. A hearing before the SCB ("SCB Hearing"), which is described in Section .08; and

3. A contested case hearing under the Uniform Administrative Procedures Act ("UAPA Hearing"), which is conducted in accordance with the University's procedures for conducting contested case proceedings under the UAPA, Chapter 1720-01-05.

(b) Rights to a Formal Hearing. In every case, the Respondent has the right to resolve allegations of misconduct and/or proposed sanctions through a hearing before a Student Life Hearing Officer. A Respondent also has the right to resolve allegations of misconduct and/or the proposed sanctions through a SCB Hearing or a UAPA Hearing when SCCS proposes one (1) or more of the following sanctions: (1) deferred suspension; (2) suspension; (3) expulsion; (4) University housing removal; (5) withholding of degree; (6) revocation of degree; or (7) revocation or suspension of the student organization's University registration.

(c) How to Request a Formal Hearing. A Formal Hearing may be requested by the Respondent only in writing using the form(s) approved by SCCS. Orally requesting a Formal Hearing shall not constitute a valid request for a Formal Hearing. If a Respondent timely requests a Formal Hearing and has a right to have either a UAPA Hearing or a SCB Hearing, then the University will conduct a UAPA Hearing unless the Respondent executes a written waiver of the right to a UAPA Hearing.

(d) Hearing before a Student Life Hearing Officer. A Student Life Hearing Officer is a University employee designated and trained by SCCS to conduct a Formal Hearing consistently with the procedures outlined in the Code for SCB Hearings (e.g., Section .08), except as provided in this Section .07(2)(d). In conducting a Formal Hearing, a Student Life Hearing Officer has the same authority of the Chairperson of the SCB except that, unlike the Chairperson of the SCB, but like the voting members of the SCB, the Student Life Hearing Officer is the decision maker concerning whether the Respondent violated the Standards of Conduct, and, if so, what sanction(s) to impose. The decision of a Student Life Hearing Officer may be appealed to the Appellate Board using procedures consistent with the procedures outlined in the Code for appeals of decisions of the SCB.

(e) Consequences of Failing to Timely Elect a Formal Hearing. If the Respondent fails to elect a Formal Hearing within five (5) business days of SCCS transmitting a Notice of Allegations in writing to the Respondent, then the Respondent waives all rights to a Formal Hearing, and SCCS has the discretion to deem the Respondent to have accepted SCCS's determination of responsibility for misconduct and may impose sanction(s) deemed appropriate by SCCS (unless SCCS extends the time for the Respondent to request a Formal Hearing for good cause). If SCCS extends the time for the Respondent to request a Formal Hearing and the Respondent fails to elect a Formal Hearing within the additional time granted by SCCS, then the Respondent waives all rights to a Formal Hearing, and SCCS has the discretion to deem the Respondent to have accepted SCCS's determination of responsibility for misconduct and may impose sanction(s) deemed appropriate by SCCS.

(3) ~~Resolution through an~~ Alternative Resolution ~~Process~~.

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

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

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

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

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

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

(b) Failure to Attend or Schedule an Educational Conference. In accordance with Section .06(6)(c), the student conduct process concludes when: SCCS has issued a Notice of Educational Conference; the Respondent either fails to attend an Educational Conference or fails to comply with SCCS's instruction to contact SCCS to schedule an Educational Conference within the time frame designated in the Notice of Inquiry; and SCCS does not exercise its discretion to excuse the Respondent's failure for good cause.

(c) Failure to Request a Formal Hearing after Notice of Allegations. In accordance with Section .07(2)(e), the student conduct process concludes when the Respondent fails to elect a Formal Hearing within five (5) business days of SCCS sending or delivering a Notice of Allegations to the Respondent, and SCCS does not exercise its discretion to excuse the Respondent's failure for good cause.

(d) Resolution Agreement. The student conduct process concludes when a Resolution Agreement is executed in accordance with Section .07(1).

(e) Alternative Resolution Agreement. The student conduct process concludes when an Alternative Resolution Agreement is executed in accordance with Section .07(3).

(f) Notice of Decision of a Student Life Hearing Officer – No Valid Appeal. The student conduct process concludes when a Student Life Hearing Officer has issued a Notice of Decision and neither the Respondent nor the Complainant has submitted a valid Notice of Appeal.

(g) Notice of Decision of a Student Conduct Board – No Valid Appeal. The student conduct process concludes when a Student Conduct Board has issued and transmitted a Notice of Decision under Section .08(5) and neither the Respondent nor the Complainant has submitted a valid Notice of Appeal under Section .08(6).

(h) Notice of Final Decision. The student conduct process concludes when the Appellate Board has issued a Notice of Final Decision.

(i) UAPA. The student conduct process concludes when a Formal Hearing has concluded, either through a final order, settlement, or otherwise, under the University's rules for conducting contested case proceedings under the UAPA, Chapter 1720-01-05.

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

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

(1) Notice of SCB Hearing.

(a) When a Notice of SCB Hearing is Sent. If the Respondent requests a SCB Hearing in accordance with Section .07(2), then SCCS will send the Respondent and the Complainant a Notice of SCB Hearing at least seven (7) business days in advance of the date of the hearing.

(b) Information in the Notice of SCB Hearing. The Notice of SCB Hearing generally will contain, or be accompanied by, the following information: (1) the date, time, and place of the SCB Hearing (SCCS may reschedule the SCB Hearing for good cause and issue a revised Notice of SCB Hearing that contains a new date, time, and place of the SCB Hearing); (2) a copy of the Notice of Allegations; (3) the sanction(s) that the Conduct Officer will request the SCB impose on the Respondent; (4) the names of all witnesses through whom the Conduct Officer is likely to present information during the SCB Hearing; (5) a notice of the right to the assistance and/or support of an Advisor during the SCB Hearing; and (6) a description of all tangible or electronic information that the Conduct Officer is likely to present to the SCB, such as an investigative report, police report, incident report, witness statements, video or audio recordings, photographs, text messages, or phone records~~.~~; (7) notice of the right to request a copy of SCCS' investigative file, redacted in accordance with the Family Educational Rights and Privacy Act of 1974, (20 U.S.C. § 1232g), and the federal regulations implementing that statute, as amended; and (8) notice of the right to request copies of all documents, copies of all electronically stored information, and access to tangible evidence that the University has in its possession, custody, or control and may use to support claims or defenses, unless the use would be solely for impeachment.

(c) More than One Respondent. In cases involving more than one (1) Respondent, SCB Hearings concerning each Respondent's conduct may be conducted separately upon written request of a Respondent submitted at the time of the Respondent's request for a Formal Hearing. SCCS has the discretion to make the final determination of whether to grant such a request and will notify the Respondents of the decision.

(d) Consequences of Failing to Attend a SCB Hearing. If the Respondent fails to attend a SCB Hearing, then the Respondent waives all rights to a SCB Hearing. The SCB may: proceed with the SCB Hearing without the Respondent's participation; hold the Respondent accountable for all decisions made in the Respondent's absence, including, without limitation, decisions concerning responsibility for alleged violations of the Standards of Conduct; and may determine that the Respondent's failure to attend the hearing constitutes a separate violation of the Standards of Conduct. If the SCB determines, in the Respondent's absence, that it is more likely than not that the Respondent

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

(2) Composition of the Student Conduct Board.

(a) Eligible Pool. The University shall annually appoint a pool of persons who are eligible to serve on a SCB. The University may appoint University students, University faculty members, or University staff employees; however, an employee who works in SCCS is ineligible to serve on a SCB. Persons appointed by the University will be trained by SCCS to serve on a SCB.

(b) Appointment of the SCB.

1. General. The SCB is appointed ad hoc for each hearing by the Director of SCCS from the pool described in Section .08(2)(a). SCCS shall appoint a SCB consisting of one (1) non-voting Chairperson and seven (7) voting members. SCCS shall not appoint persons on the basis of how SCCS anticipates that they will vote. The Chairperson shall be a University faculty member or staff employee who has received training from SCCS on how to conduct a SCB Hearing. Five (5) voting members and one (1) non-voting Chairperson constitute a quorum of the SCB that was appointed by SCCS; however, SCCS will make reasonable efforts to seat a SCB consisting of seven (7) voting members. In seating any SCB, except as provided in Section .08(2)(b)(2) or Section .08(2)(b)(3), the student composition of the voting members of the SCB must be equal to or greater than the sum of the faculty and staff voting members. Regardless of the number of voting members present, all classifications of the University community (students, faculty, and staff) must be represented by at least one (1) voting member, except as provided in Section .08(2)(b)(2) or Section .08(2)(b)(3).

2. Exception for Cases Involving Allegations of Sexual Misconduct. Notwithstanding anything to the contrary in Section .08(2)(b)(a), SCCS shall not appoint students to serve on the SCB in a case involving an allegation of sexual misconduct unless both the Respondent and the Complainant consent to having students appointed to serve on the SCB hearing their case.

3. Exception for Cases Involving Allegations of Research Misconduct. Notwithstanding anything to the contrary in Section .08(2)(b)(a), SCCS shall not appoint students to serve on the SCB in a case involving an allegation of research misconduct.

(c) Fairness and Impartiality of SCB Members. Any member of the SCB who determines that they cannot decide a case fairly and impartially for any reason (e.g., having a personal prejudice or bias) shall excuse themselves from serving on the SCB, in which case SCCS shall appoint a substitute member of the panel in accordance with the rules in Section .08(2)(b).

(3) General Rules Governing SCB Hearings.

(a) Required Pre-Hearing Information and Copies – Complainant and Respondent.

1. At least five (5) business days prior to the SCB Hearing, the Complainant and the Respondent must provide the following to SCCS in writing:

   (i) The name of their Advisor, if any, who will attend the SCB Hearing;

   (ii) The names of all witnesses through whom they plan to present information to the SCB and a brief summary of the information that they reasonably anticipate that each witness will provide to the SCB;

   (iii) A copy of all tangible or electronic information that they plan to present to the SCB (e.g., witness statements, video or audio recordings, photographs, text messages, phone records, medical bills, diagrams). However, they are not required to provide copies of information that is not in a form that allows copying (e.g., weapon; piece of clothing), in which case they should describe the information in writing; and

   (iv) A copy of a statement, if any, that they want the SCB to consider in determining the appropriate sanction to impose on the Respondent if the SCB finds that the Respondent violated a Standard of Conduct. The Complainant's statement may include a description of the impact of the Respondent's alleged conduct on the Complainant. The Respondent's statement may include a description of any factors the Respondent believes mitigates the alleged misconduct.

2. During the SCB Hearing, the Complainant and the Respondent may present witnesses who were not identified in the Notice of Formal Hearing only if they comply with this Section .08(3)(a) (i.e., other witnesses not identified to SCCS in writing at least five (5) business days prior to the SCB Hearing will not be allowed). The Complainant and the Respondent are responsible for contacting witnesses who were not identified in the Notice of Formal Hearing, informing them about the date, time, and place of the SCB Hearing, and securing their attendance at the SCB Hearing.

(b) Pre-Hearing Review of Information. Individuals involved with the hearing are responsible for contacting SCCS to arrange a time to review the information prior to the hearing if such review is desired and the information has not been made available electronically. No less than three (3) business days prior to the hearing, SCCS will make copies of information submitted by the Complainant, the Respondent, and the Conduct Officer available for review by the Complainant, Respondent, their respective Advisors, and members of the SCB. Those individuals will be notified by SCCS when materials are available for review. SCCS may make the information available electronically. In their sole discretion, SCCS may redact irrelevant information prior to making information available.

(c) Recording of the SCB Hearing. The University shall be responsible for making a verbatim record (e.g., digital recording) of a SCB Hearing. Deliberations of the SCB shall not be recorded. The record of the SCB Hearing shall be the property

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

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

(4) Procedural Rules for SCB Hearings.

(a) Right to Challenge the Selection of a SCB Member. At the beginning of the SCB Hearing, the Chairperson shall allow the Complainant and the Respondent to request the removal of a member of the SCB on the grounds that the person cannot be fair and impartial in deciding the case. If the Chairperson determines that the person cannot be fair and impartial, then SCCS may appoint a substitute member of the SCB in accordance with Section .08(2)(b) or, if a quorum of the SCB still exists, remove the SCB member and allow the SCB Hearing to continue without appointing a substitute member.

(b) Authority of the Chairperson. The Chairperson has the authority to maintain order and make all decisions necessary for the fair, orderly, and expeditious conduct of the SCB Hearing. The Chairperson shall be the final decision maker concerning what, how, and in what order information and witnesses are presented to the SCB.

(c) Exclusion of Information. Upon the Chairperson's initiation or upon request by the Conduct Officer, the Complainant, the Respondent, or a member of the SCB, the Chairperson may exclude the following information from the SCB's consideration:

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

(d) Persons Who May Present Information. The only persons who may present information and/or witnesses during a SCB Hearing are the Conduct Officer, the Complainant, and the Respondent. The Complainant and the Respondent are responsible for presenting their own information and/or witnesses, if any, to the SCB (an Advisor shall not present information and/or witnesses to the SCB).

(e) Formal Rules. Formal rules of process, procedure, and/or technical rules of evidence, such as those applied in criminal or civil court, are not used in SCB Hearings. The Chairperson shall decide all procedural questions that arise during a SCB Hearing. The Chairperson may consult with SCCS for assistance in resolving procedural questions fairly and in accordance with the Code.

(f) Questioning of Witnesses. Witnesses will provide information to the SCB and answer questions from the Chairperson. The Chairperson may ask questions and/or submit a request for additional information to the Respondent, the Complainant, the Conduct Officer, and/or witnesses. The Conduct Officer, the Respondent and/or the Complainant shall not directly ask questions to each other or other witnesses. The Conduct Officer, the Respondent, the Complainant, and/or members of the SCB may propose questions for the Chairperson to ask witnesses by submitting the proposed questions to the Chairperson in writing during the hearing. The Chairperson has the discretion whether to ask a witness a question proposed by the Conduct Officer, the Respondent, the Complainant, and/or members of the SCB. The method of questioning witnesses outlined in this Section .08(4)(f) is used to preserve the educational tone of the SCB Hearing and to avoid the creation of an adversarial environment.

(g) Closing Statements. At the close of the SCB Hearing, the Chairperson may allow the Conduct Officer, the Complainant, and the Respondent equal opportunities to make statements to the SCB summarizing the information presented to the SCB and/or advocating the decision that the SCB should reach. The Conduct Officer and the Complainant may advocate that the SCB impose a specific sanction(s), and the Respondent may respond; however, the Respondent's record of student

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

(h) Burden of Presenting Information Demonstrating Misconduct. The Conduct Officer bears the burden of presenting information demonstrating that it is more likely than not that the Respondent violated a Standard of Conduct, as alleged in the Notice of Allegations. Neither the Complainant nor the Respondent is required to present information or witnesses concerning the Respondent's alleged misconduct. The SCB shall not draw an inference adverse to the Conduct Officer, the Complainant, or the Respondent if the Complainant or the Respondent chooses not to present information or witnesses to the SCB.

(5) Notice of Decision of the Student Conduct Board.

(a) Deliberation of the SCB. After the Chairperson determines that all relevant information has been received by the SCB, the SCB will deliberate in private and decide, for each Standard of Conduct alleged in the Notice of Allegations to have been violated, whether it is more likely than not that the Respondent violated the Standard of Conduct. The SCB will decide by majority vote whether the Respondent violated the Standards of Conduct. The Chairperson shall not vote on the decision of whether the Respondent is responsible for violating the Standards of Conduct or what sanctions should be imposed unless there is a tie vote of the SCB.

(b) Basis of Decision. The SCB shall not base its decision on information not presented during the SCB Hearing. However, if the SCB requests that additional information be provided after the SCB Hearing, the SCB may consider and base its decision on the additional information, as long as the Conduct Officer, the Respondent, and the Complainant have had a chance to review and respond to the additional information either in a resumption of the SCB Hearing or in writing.

(c) Determination of Sanction(s). If the SCB decides that the Respondent violated the Standards of Conduct, then the SCB will decide the appropriate sanction(s) by majority vote. In deciding the appropriate sanctions for a Respondent's misconduct, the SCB may consider: (1) statements submitted by the Complainant and/or the Respondent to the SCB concerning the appropriate sanctions; and (2) a statement about the Respondent's conduct history, which shall be provided to the Chairperson by SCCS in a sealed envelope prior to the SCB Hearing.

(d) Issuance of Notice of Decision. Issuance of Notice of Decision. Within three (3) business days of the conclusion of the SCB Hearing, the Chairperson shall issue a Notice of Decision and transmit a copy of the Notice of Decision to SCCS. SCCS shall notify the Respondent about the Notice of Decision and provide a copy of the Notice of Decision. If permitted or required under law, SCCS shall notify the Complainant about the Notice of Decision (simultaneously with the notification to the Respondent) and provide a copy of the Notice of Decision to the Complainant.

(e) Information in Notice of Decision. The following information shall be included in the Notice of Decision: (1) for each Standard of Conduct identified in the Notice of Allegations, the SCB's decision concerning whether it is more likely than not

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

(6) Appealing Decisions of the Student Conduct Board.

(a) Appealable Decisions. The Conduct Officer, the Complainant and/or the Respondent may appeal the decisions of the SCB that are contained in the Notice of Decision, but the grounds for appeal are limited to those described in Section .08(6)(c).

(b) Notice of Appeal. An appeal is procedurally valid only if all of the following requirements are met: (1) an appeal shall be submitted in writing by fully completing a form approved by SCCS called a "Notice of Appeal;" (2) the Notice of Appeal shall be received by SCCS within five (5) business days of the date that SCCS transmitted the Notice of Decision; and (3) the Notice of Appeal shall not include information that is not included in the record of the SCB Hearing, except the Notice of Appeal may contain a summary of the new information described in Section .08(6)(c)(3).

(c) Grounds for Appeal. The Notice of Appeal shall explain the grounds for the appeal, which shall be limited to one (1) or more of the following grounds:

1. Clearly Unreasonable Sanction. The sanction(s) imposed by the SCB is clearly unreasonable (i.e., has no sound basis or justification in reason).

2. Material Procedural Error. A procedural error occurred prior to or during the SCB Hearing, and the procedural error reasonably could have had a material impact on the SCB in reaching its decision. Neither the failure of the Respondent or the Complainant to secure the attendance of an Advisor or witness nor the failure of an Advisor or witness to attend or otherwise participate in any phase of the student conduct process constitutes a material procedural error. The failure of the Respondent or the Complainant to attend the SCB Hearing does not constitute a material procedural error.

3. New Information. New information has been discovered, the information reasonably could have had a substantial impact on the SCB in reaching its decision, and the person submitting the Notice of Appeal did not know and reasonably could not have known about the information at the time of the SCB Hearing.

4. Personal Prejudice or Bias of a SCB Member. A SCB member had a personal prejudice or bias that precluded them from fairly and impartially hearing the case. The fact that a SCB member voted to find a Respondent responsible or not responsible for violating a Standard of Conduct does not, by itself, demonstrate that the SCB member had a personal prejudice or bias for or against the Respondent, the Complainant, or the University.

(d) Effective Date of Sanction. The sanction(s) imposed by the SCB shall not be effective during the period in which a Notice of Appeal may be submitted, or, if a procedurally valid Notice of Appeal has been submitted (as determined by Section .08(6)(b)), until a Notice of Final Decision is issued by the Appellate Board, whichever is later. In cases in which the sanction of degree revocation is imposed, the sanction shall be presented to the Chancellor for approval before the sanction is imposed.

(e) Appellate Board. The Appellate Board is the University body that considers appeals of decisions of the SCB, after a procedurally valid Notice of Appeal has been submitted to SCCS. SCCS will appoint a pool of persons trained by SCCS who are eligible to serve on an Appellate Board. SCCS may appoint University students, University faculty members, or University staff employees to be members of that pool. SCCS shall not appoint persons on the basis of how SCCS anticipates that they will vote.

(f) Determination of Procedural Validity of Notice of Appeal. Within five (5) business days after the receipt of a Notice of Appeal, SCCS will determine whether the Notice of Appeal is procedurally valid. A Notice of Appeal is procedurally valid only if it has been fully completed, timely submitted to SCCS, does not contain information outside of the record of the SCB Hearing, and does not contain a ground for appeal not listed in Section .08(6)(c). If a Notice of Appeal is procedurally invalid and the time for submitting a Notice of Appeal under this Section .08(6)(f) has expired, then SCCS shall send the Conduct Officer, the Respondent, and the Complainant (if permitted or required by law) a notice that the decision of the SCB has become final and any sanction(s) imposed will become effective immediately. However, in a case in which the Notice of Appeal contains information outside of the record of the SCB Hearing or a ground for appeal not listed in Section .08(6)(c), SCCS may proceed with appointing an Appellate Board after removing from the Notice of Appeal information that was not included in the record of the SCB Hearing and/or the impermissible ground for appeal.

(g) Appointment of Appellate Board. If the Notice of Appeal is procedurally valid, then SCCS shall appoint an Appellate Board to hear the appeal from the pool of persons who are eligible to serve on an Appellate Board. An Appellate Board shall be composed of one (1) non-voting Chairperson and three (3) voting members. At least one (1) voting member of the Appellate Board shall be a University student; except, however, SCCS shall not appoint students to serve on an Appellate Board in a case involving an allegation of research misconduct or involving an allegation of sexual misconduct unless both the Respondent and the Complainant consent to having students appointed to serve on the Appellate Board hearing their case. The Director of SCCS shall not appoint a person to serve as Chairperson or a voting member of the Appellate Board if the person served as a Chairperson or a voting member of the SCB whose decision is being appealed. In addition, an employee who works in SCCS or whose direct supervisor is the Conduct Officer who participated in the SCB Hearing shall be ineligible to serve as a member of the Appellate Board.

(h) Transmittal of Notice of Appeal. After the appointment of the members of the Appellate Board, SCCS shall transmit a copy of the Notice of Appeal to persons who have a need to know about the Notice of Appeal, including, without limitation, the members of the Appellate Board and all non-appealing parties

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

(i) Recusal. Any member of the Appellate Board who determines that they cannot decide the appeal fairly and impartially for any reason shall recuse themselves from serving on the Appellate Board, in which case SCCS shall appoint a substitute member of the Appellate Board in accordance with this Section .08(6)(g).

(j) Review of the Record. The Appellate Board's final decision shall be based on its review of the record of the hearing before the SCB, which shall be limited to: (1) the Notice of Allegations; (2) the Notice of Formal Hearing; (3) the Notice of Decision; (4) the recording and the transcript, if any, of the hearing, and all other information submitted to the SCB during the hearing; and (5) the Notice of Appeal and any written responses, in accordance with Section .08(6)(h).

(k) Potential Decisions of the Appellate Board. The Appellate Board shall reach one (1) of the following decisions, by a majority vote, if the appeal is determined to be procedurally valid:

1. Affirm both the SCB's finding that the Respondent violated the Standards of Conduct and the sanctions imposed by the SCB;

2. In a case involving a clearly unreasonable sanction, the Appellate Board may modify the sanctions imposed by the SCB by imposing a greater or lesser sanction(s);

3. In a case involving a material procedural error, the Appellate Board shall remand the case for a new hearing to be conducted by a new SCB or the same SCB. The Appellate Board should recommend to the Chairperson how to correct the procedural error. SCCS may appoint a substitute member for any member of the SCB who is unavailable to participate in the new hearing; or

4. In a case of new information that fits the criteria described in Section .08(6)(c)(3), remand the case to the same SCB for the limited purpose of hearing the new information and reconsidering its decision based on the new information. SCCS may appoint a substitute member for any member of the SCB who is unavailable to participate in hearing the new information or the reconsideration of the decision.

5. In a case in which a SCB member had a personal prejudice or bias, remand the case for a new hearing to be conducted by a new SCB.

(l) Notice of Final Decision. The Appellate Board shall communicate its decision through a written notice called a Notice of Final Decision. The Notice of Final Decision should be issued within ten (10) business days of the submission of the Notice of Appeal. The Notice of Final Decision shall be sent to SCCS, who will notify the Conduct Officer, the Respondent, the Chairperson of the SCB, and, if permitted or required by law, the Complainant about the Notice of Decision and provide them with a copy of the Notice of Decision. The decision of the Appellate Board is final and is not subject to appeal.

(7) Other Issues Heard by the SCB. In addition to hearing disputes concerning violations of the Standards of Conduct, the Student Conduct Board shall also be the University body that hears disputes concerning the interpretation of the Student Government Constitution and disputes concerning the results of Student Government elections.

1720-04-03-.09 SANCTIONS.

(1) General Rules.

(a) Purposes of Sanctions. The purposes of sanctions include, without limitation: (1) to educate the Respondent about appropriate conduct; (2) to promote the personal and professional development of the Respondent; (3) to discourage the Respondent and other students from violating the Standards of Conduct; and (4) to protect other members of the University community. The sanctions imposed on a Respondent should be proportional to the Respondent's misconduct and appropriate for the particular case based on the gravity of the offense (including, without limitation, how the violation affected or reasonably could have affected other members of the University community). Consideration may also be given to the Respondent's conduct record; whether the Respondent acted in self-defense, and, if so, whether the amount of force used was reasonable under the circumstances; the Respondent's academic classification (e.g., undergraduate, graduate, freshman, sophomore, junior, senior); and other aggravating or mitigating factors.

(b) Administrative and Developmental Sanctions. A student who accepts responsibility or is found responsible for violating the Standards of Conduct generally will be given one (1) or more administrative sanctions. A student may also be given one (1) or more developmental sanctions.

(2) Administrative Sanctions.

(a) Warning. A warning is a written notice to a student that informs the student that the student has violated the Standards of Conduct, that the misconduct must cease and/or not reoccur, and that further misconduct will likely result in the imposition of more serious sanctions.

(b) Disciplinary Probation. Disciplinary probation is imposed for a specified period of time during which the student may continue to be enrolled but must demonstrate conduct that conforms to the Standards of Conduct. Conditions may be placed on the student's continued enrollment. A student may be placed on disciplinary probation for moderate misconduct or in the case of repeated minor misconduct. Also, a student allowed to re-enroll following a suspension will be placed on disciplinary probation. Subsequent violations of the Standards of Conduct during

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

(c) Deferred Suspension. A deferred suspension is a designated period of time during which a student, while continuing to be enrolled, is given an opportunity to demonstrate the ability to abide by the Standards of Conduct. A student may be placed on deferred suspension for serious misconduct or in the case of repeated misconduct. If the student is found responsible for any additional violation(s) of the Standards of Conduct while the student is on deferred suspension, then the sanction of suspension will be the minimum sanction that will be imposed in a Formal Hearing on the subsequent misconduct. Students who are placed on deferred suspension generally also receive disciplinary probation and ~~are also generally given~~ developmental sanctions.

(d) Suspension. A suspension is an official separation of a student from the University for a specific period of time and/or until certain conditions are met. A suspension may be imposed for serious misconduct and/or for a violation of deferred suspension. Suspension may include conditions that must be satisfied prior to a student being allowed to re-enroll and/or conditions that will be in place if the student is allowed to re-enroll. The effective date of a suspension may be imposed retroactively to the date that the misconduct occurred. While suspended, the student loses all University rights and privileges (e.g., enrollment privileges), shall not represent the University in any official manner, and shall not be present on University-controlled property without the prior approval of the Vice Chancellor for Student Life. The student may be required to meet with an assigned Student Life staff member periodically while suspended to ensure the student is making satisfactory progress regarding the developmental sanctions issued. The Vice Chancellor for Student Life will determine whether the student is eligible for consideration for re-enrollment by the University's admissions office(s). Students who are permitted to return to the University following a period of suspension will automatically be placed on disciplinary probation by SCCS for a designated period of time, which is designed to facilitate a smooth transition back to the University community. A student on post-suspension disciplinary probation must abide by the Standards of Conduct and all terms and conditions placed on the student's re-enrollment.

(e) Expulsion. Expulsion is a sanction that permanently bars a person from re-enrolling as a student at the University. This sanction generally is imposed when the student's misconduct is deemed so serious as to warrant total and permanent disassociation from the University community without the possibility of re-enrollment; and/or when, by the student's repeated misconduct, a student has exhibited a blatant disregard for the health, safety, or welfare of other members of the University community or the University's right to establish rules of conduct. A person who has been expelled shall not be present on University-controlled property without the prior approval of the Vice Chancellor for Student Life.

(f) Withholding of Degree. The University may withhold a degree as a disciplinary sanction for a specified period of time or until the student's completion of all other sanctions imposed, whichever occurs later.

(g) Revocation of Degree. The sanction of the revocation of a degree may be imposed if a student has obtained a degree at least in part through cheating, plagiarism, other academic dishonesty, or through research misconduct.

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

(h) Disciplinary Probation for Student Organizations. A student organization given the sanction of disciplinary probation is permitted to retain University student organization registration on a probationary status. As a condition of the disciplinary probation, the student organization also may be given developmental sanctions.

(i) Social Probation for Student Organizations. Social probation prohibits a student organization from sponsoring or participating in specified social activities. While on social probation, a student organization may not host social events or participate in University-affiliated activities. Any exceptions to social probation must be approved, in advance, by the Vice Chancellor for Student Life.

(j) Deferred Suspension for Student Organizations. A deferred suspension is a designated period of time during which a student organization, while continuing to be active, is given an opportunity to demonstrate the ability to abide by the Standards of Conduct. A student organization may be placed on deferred suspension for serious misconduct or in the case of repeated misconduct. If the student organization is found responsible for any additional violation(s) of the Standards of Conduct while the student organization is on deferred suspension, then the sanction of revocation or suspension of University registration will be the minimum sanction that will be imposed in a Formal Hearing on the subsequent misconduct. Student organizations who are placed on deferred suspension generally also receive disciplinary probation and developmental sanctions.

~~(j)~~(k) Revocation or Suspension of University Registration. In cases of serious or repeated misconduct, a student organization's University registration may be suspended or revoked.

(3) Developmental Sanctions. In addition to an administrative sanction(s), one (1) or more of the following developmental sanctions may be imposed in an effort to foster student learning and development.

(a) Educational Activities. Educational activities are designed to educate the student about why certain conduct was inappropriate. Examples of such activities include, without limitation, offering a formal apology (in writing and/or in person); attending an educational class, training, or workshop; giving or attending a presentation; preparing and submitting a research project or paper on a designated topic; or offering a written reflection responding to a prompt given by SCCS.

(b) Restitution. Restitution is compensation for loss, damage, and/or injury incurred as a result of the student's conduct. Compensation may take the form of money, service, and/or material replacement. Restitution may be required to be made to the University, a specific individual, or a specific organization. Normally, all restitution must be paid or made within two weeks of the imposition of the sanction.

(c) Supervised Work/Service. A student may be assigned unpaid work or service that is both beneficial to the University community and/or likely to assist the student in understanding the effects of the student's conduct.

(d) Loss or Restriction of Privileges. Specified student privileges are lost or restricted. Such privileges include, without limitation, representing the University in any official manner, the use of or access to University-controlled property, University parking privileges, or participation in University-affiliated activities (e.g., extracurricular activities).

(e) University Housing Reassignment or Removal. A student may be assigned to a different residence hall or residence hall room. A student's residence hall contract also may be terminated, and the student may be prohibited from residing in University housing for a definite or indefinite period of time.

(f) Mandatory Education. A student may be required to participate in one (1) or more educational programs, classes, or workshops relating to the student's misconduct, including, without limitation, education concerning alcohol or drugs. The student may be held responsible for the payment of expenses relating to the educational program/class/workshop(s).

1720-04-03-.10 HONOR STATEMENT.

(1) Honor Statement. An essential feature of the University is a commitment to maintaining an atmosphere of intellectual integrity and academic honesty. As such the University utilizes an Honor Statement that reads, "As a student of the University, I pledge that I will neither knowingly give nor receive any inappropriate assistance in academic work, thus affirming my own personal commitment to honor and integrity."

(2) Informing Students and Faculty. The following methods will be used to inform students and faculty members about the Honor Statement: (1) the Honor Statement appears on undergraduate and graduate applications for admission, and applicants will be required to acknowledge his/her affirmation of the Honor Statement in writing; (2) information regarding the Honor Statement is included in the undergraduate and graduate catalogs, Hilltopics; (3) the Honor Statement is discussed during student orientation programs; (4) faculty members are encouraged to discuss the Honor Statement with students in entry-level English courses; (5) faculty members are encouraged to include the Honor Statement in their course syllabus; (6) implementation methods and alternatives are discussed during faculty orientation programs; and (7) the enforcement of the Honor Statement is through the Standards of Conduct (Section .04(1)) and the student conduct process.

(3) Academic Dishonesty. The Honor Statement prohibits cheating, plagiarism, and any other type of academic dishonesty.

(4) Plagiarism. Plagiarism is using the intellectual property or product of someone else without giving proper credit. The undocumented use of someone else's words or ideas in any medium of communication (unless such information is recognized as common knowledge) is a serious offense, subject to disciplinary action that may include failure in a course and/or dismissal from the University. Specific examples of plagiarism include, but are not limited to: (1) using without proper documentation (quotation marks and citation) written or spoken words, phrases, or sentences from any source; (2) summarizing without proper documentation (usually a citation) ideas from another source (unless such

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

(5) Examples of Other Types of Academic Dishonesty. Specific examples of other types of academic dishonesty include, but are not limited to: (1) providing or receiving unauthorized information during an examination or academic assignment, or the possession and/or use of unauthorized materials during an examination or academic assignment; (2) providing or receiving unauthorized assistance in connection with laboratory work, field work, scholarship, or another academic assignment; (3) falsifying, fabricating, or misrepresenting data, laboratory results, research results, citations, or other information in connection with an academic assignment; (4) serving as, or enlisting the assistance of, a substitute for a student in the taking of an examination or the performance of an academic assignment; (5) altering grades, answers, or marks in an effort to change the earned grade or credit; (6) submitting without authorization the same assignment for credit in more than one course; (7) forging the signature of another or allowing forgery by another on any class or University-related document such as a class roll or drop/add sheet; (8) gaining an objectively unfair academic advantage by failing to observe the expressed procedures or instructions relating to an exam or academic assignment; and (9) engaging in an activity that unfairly places another student at a disadvantage, such as taking, hiding, or altering resource material, or manipulating a grading system.

(6) Responsibilities Associated with the Honor Statement. All members of the University community have responsibilities associated with the Honor Statement. These responsibilities are unique to each sector of the University community. Each student is responsible for his/her own personal integrity in academic life. Each student is responsible for knowing and adhering to the terms and conditions of the Honor Statement and may acknowledge his/her adherence to the Honor Statement by writing, "Pledged," and signing on a graded class assignment or examination. Although there is no affirmative duty to report the academic dishonesty of another, each student, given the dictates of his/her own conscience, may choose to report any violation of the Honor Statement to a faculty member or to SCCS. The prevention of academic dishonesty, and the response to academic dishonesty, is the immediate responsibility of the instructor. However, students are not excused from complying with the Honor Statement because of an instructor's failure to prevent or discourage academic dishonesty.

(7) Academic Dishonesty – Resolution by the Academic Department.

(a) Notice of Academic Dishonesty and Informal Opportunity to Respond to Allegations. When an act of alleged academic dishonesty is discovered by, or brought to the attention of an instructor, the instructor shall notify the student about the alleged academic dishonesty, describe the information supporting the allegation, and give the student an informal opportunity to respond to the allegation(s) and information. The instructor may proceed with imposing an academic penalty for academic dishonesty if the student has not responded to the instructor's notice to the student concerning the alleged academic dishonesty within five (5) business days of the notice. The instructor does not have the authority under the Code to impose a sanction identified in Section .09(2) or Section .09(3). An academic penalty shall not take effect until after the deadline

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

(b) Decision Whether to Impose an Academic Penalty. After giving the student notice and an informal opportunity to respond, if the instructor concludes that the student engaged in academic dishonesty, then the instructor may impose an academic penalty of a failing or reduced grade in the academic exercise, assignment, examination, and/or course; loss of credit for the work involved; an assignment to repeat the work, to be graded on its merits; and/or an oral or written reprimand. An instructor may impose more than one (1) academic penalty. If the instructor decides to impose an academic penalty, then the instructor shall transmit a notice to the student of the allegations, information, findings, academic penalty imposed, and information on the student's options to appeal the findings and/or penalties under Section .10(7)(c). The notice should be countersigned by the department head. Copies of the notice to the student shall be submitted to SCCS, the dean or other chief administrative head of the instructor's academic unit, and, where different, the dean or other chief administrative head of the academic unit in which the student is enrolled. The instructor is not required to notify a student that a complaint has been made to SCCS.

(c) Appeals of Academic Penalties. Within five (5) business days of the transmittal of the notice to the student described in Section .10(7)(b)(2), the student may appeal the academic penalty imposed by the instructor by submitting a written Notice of Appeal of Academic Penalty to SCCS, using a form approved by SCCS. The SCB hears appeals of academic penalties. If SCCS does not issue a Notice of Allegations, then the instructor shall serve as the Conduct Officer in the SCB Hearing. The decision of the SCB, or the Appellate Board if the decision is appealed, shall be the final decision of the University concerning the academic penalty. For example, if the SCB's decision, if not appealed to the Appellate Board, is to reverse a grade of "F" for the course, then SCCS will inform the University's Registrar of the SCB's decision and request the Registrar to enter the grade for the course that the student would have received if the student had not been accused of academic dishonesty. If there is a question about what grade the student would have received if the student had not been accused of academic dishonesty, the question will be referred to the Provost for resolution.

(8) Academic Dishonesty – Resolution through the Student Conduct Process. After receiving notice from the instructor under Section .10(7)(b), SCCS may proceed with the student conduct process and determine of whether to issue a Notice of Allegations for violating Section .04(1). A decision by SCCS not to issue a Notice of Allegations shall not be used by the student to support an appeal of an academic penalty imposed by the student's instructor. In addition, SCCS may issue a Notice of Allegations for violating Section .04(1) regardless of the response of the instructor to the alleged academic dishonesty. If an instructor alleges that a student engaged in academic dishonesty and the student wants to appeal the academic penalty and/or SCCS issues a Notice of Allegations containing an allegation of a violation of Section .04(1), then the allegations against the student and the issue of the appropriate academic penalty shall be resolved through a Resolution Agreement, a Formal Hearing, or an Alternative Resolution Process.

(9) College of Law. The University of Tennessee College of Law has adopted and promulgated its own Code of Academic Conduct, Chapter 1720-04-09. Chapter 1720-04-

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

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

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

(1) Background. The University of Tennessee holds paramount the health, safety, and welfare of students. Accordingly, all University students are expected to alert appropriate officials in the event of a health, safety, or welfare emergency, including, without limitation, a situation involving the abuse of alcohol or other drugs.

(2) Expectations. When individual students know or reasonably should have known that other individual students are in need of emergency medical attention, the individual students are expected to: (1) contact appropriate people to report the incident and request assistance (e.g., University staff members, law enforcement), and provide those people with the names and contact information for the individual students reporting the incident and the impaired individual students; and (2) demonstrate cooperation and care by remaining with the impaired individual students and providing reasonable assistance during and after the incident. Individual students who take all of the steps described in this Section .11(2) will be referred to as a "Good Samaritan" under the Code. The individual students in need of emergency medical attention will be referred to as an "impaired individual student" under the Code.

(3) Amnesty for Individual Good Samaritans. Unless individual Good Samaritans have engaged in a repeated or serious violation of the Standards of Conduct (e.g., physical or sexual assault, property destruction, disorderly behavior, theft, second incident of misconduct involving alcohol or drugs), individual Good Samaritans will not be subject to formal University disciplinary action for misconduct discovered by the University as a result of the Good Samaritan's report. While no formal University disciplinary action may be taken, the individual students who acted as a Good Samaritan may be required to meet with a University staff member to discuss the individual Good Samaritan's misconduct and adhere to appropriate remedial and/or educational recommendations.

(4) Amnesty for Individual Impaired Students. Unless individual impaired students have engaged in a repeated or serious violation of the Standards of Conduct (e.g., physical or sexual assault, property destruction, disorderly behavior, theft, second incident of misconduct involving alcohol or drugs), individual impaired students will not be subject to formal University disciplinary action for misconduct discovered by the University as a result of the Good Samaritan's report. While no formal University disciplinary action may be taken, the individual impaired students may be required to meet with a University staff member, participate in educational activities, and/or establish that the individual students have addressed issues that contributed to the misconduct.

(5) Application of the Amnesty Policy to Student Organizations. Student organizations, through their officers and members, are also expected to take responsible action in emergency situations. While the Policy on Amnesty for Individual Good Samaritans and Students in Need of Emergency Medical Attention may not fully apply, adherence to steps described in Section .11(2) by a student organization's officers and/or members will be considered a mitigating factor when determining the outcome of or sanction for

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

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

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

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

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

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

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

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

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

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

(1) Attend: To participate in a meeting or hearing electronically or in person.

(2) Business Day: Any weekday not designated by the University as a holiday or administrative closure day. When calculating a time period of business days specified in the Code, the business day of the event that triggers a time period is excluded.

(3) Chairperson: A faculty or staff member appointed by SCCS to preside over and facilitate a SCB Hearing.

(4) Code, Code of Conduct, or Student Code of Conduct: The University of Tennessee, Knoxville's Student Code of Conduct, Chapter 1720-04-03.

(5) Complainant: An individual who may have been subjected to student conduct that violates the Standards of Conduct, regardless of whether that individual makes a complaint or report to SCCS. This term does not imply pre-judgment concerning whether the Respondent violated the Standards of Conduct. SCCS is the final decision maker with respect to whether an individual is a Complainant for purposes of the Code.

(6) Conduct Officer: A University employee designated by SCCS to present information on behalf of SCCS to the Student Conduct Board. The Conduct Officer shall be employed in the Division of Student Life but is not required to be employed by SCCS. However, in a case involving alleged academic dishonesty in which SCCS has not issued a Notice of Allegations, the instructor generally will be designated as the Conduct Officer.

(7) Disciplinary Hold: The University hold described in Section .06(4)(c).

(8) Disciplinary Records: A written record that personally identifies a Respondent and is maintained by SCCS.

(9) Faculty Member or Instructor: A person hired by the University to conduct teaching, research, or supervised clinical placements.

(10) Formal Hearing: A SCB Hearing, a hearing before a Student Life Hearing Officer, and/or a UAPA Hearing.

(11) Good Faith: Having a belief in the truth of information that a reasonable person in the same position could have, based on the information known to the person communicating the information at the time the information was communicated by that person. Information is not communicated in good faith if it is communicated with knowing or reckless disregard for information that would negate the former information.

(12) Knoxville Area: The geographical area that consists of the following counties in the state of Tennessee: Knox, Anderson, Union, Grainger, Jefferson, Sevier, Blount, Loudon, and Roane.

(13) Member of the University Community: A person who is a student, University employee, University volunteer, invited visitor to University-controlled property, or participant in a University-affiliated activity.

(14) Notice or Notify (given to students): Written notice transmitted by United States mail, courier service, or hand delivery to the address the University's Registrar has on file for the student; and/or by e-mail to a student's University-provided e-mail account. When a notice is transmitted by United States mail or courier service, the notice is effective on the

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

(15) Possession: Direct control of a substance or property, actual knowledge of a substance or property, and/or being in such close proximity to the substance or property that it is a reasonable presumption that one had knowledge of the substance or property.

(16) Protected Activity: A person's good faith: (1) opposition to conduct prohibited under the Standards of Conduct; (2) report to the University about conduct prohibited under the Standards of Conduct to the University; (3) participation (or reasonable expectation of participation) in any manner in an investigation, meeting, hearing, or interim measure; or (4) exercise of rights or responsibilities under any provision of the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act.

(17) Reasonable Person: A sober, objectively reasonable person in the same situation, and with the same sex, gender identity, and sexual orientation as the person whose words and/or conduct are being evaluated.

(18) Relevant Information: Information having any tendency to make the existence of any fact that is of consequence to determining whether the Respondent violated the Standards of Conduct more probable or less probable than it would be without the information.

(19) Respondent: A student or student organization who has been accused of violating the Standards of Conduct and/or whose conduct is being investigated by SCCS.

(20) Sanction: An administrative sanction and/or a developmental sanction.

(21) SCB: Student Conduct Board.

(22) SCCS: The Office of Student Conduct and Community Standards, which acts through University employees designated by the Director of SCCS to act on behalf of the University in the student conduct process, including, without limitation University employees who work in SCCS and University employees who work in University Housing.

(23) Staff Member: A person employed by the University on a part- or full-time basis, primarily involved in planning, organizing, staffing, directing and controlling efforts to achieve the goals and objectives of the University.

(24) Standards of Conduct: Chapter 1720-04-03-.04.

(25) Student: For purposes of the Code, the term "student" means:

(a) A person enrolled or registered for study at the University, either full-time or part-time, pursuing undergraduate, graduate, or professional studies, as well as non-degree and non-credit programs and courses;

(b) A student organization;

(c) A person who has completed the immediately preceding academic term and is eligible for re-enrollment;

(d) A person who is not officially enrolled but who has a continuing relationship with the University (e.g., on educational leave or other approved leave status);

(e) A person who attended the University during a previous academic term and who engaged in misconduct during the time of enrollment; and/or

(f) A person who has been admitted to the University and later matriculates at the University, with respect to misconduct:

1. That occurs as part of the application process; or

2. That occurs post-admission and pre-matriculation and falls within the jurisdiction of the Code (e.g., occurs on University-controlled property).

(26) Student Life Hearing Officer. As more fully described in Section .07(2)(d), a University employee designated by the Director of SCCS to conduct a Formal Hearing.

(27) Student Organization: An organization that is composed solely of University students that has submitted a pending application or has completed the process for registration according to University rules.

(28) UAPA: Uniform Administrative Procedures Act, Tennessee Code Annotated, § 4-5-301 et seq.

(29) UAPA Hearing: A hearing conducted by an ~~University~~ administrative judge or hearing officer in accordance with the University's procedures for conducting a contested case hearing pursuant to the UAPA, Chapter 1720-01-05.

(30) University: The University of Tennessee, Knoxville; the University of Tennessee Institute of Agriculture; and their campuses, centers, institutes, and constituent parts including, without limitation, their academic, administrative, or auxiliary departments or divisions.

(31) University-Affiliated Activity: means an activity on or off University-controlled property that is initiated, aided, authorized, sponsored, or supervised by the University.

(32) University-Controlled Property: All land, grounds, structures, or any other property owned, controlled, or operated by the University. For purposes of this rule, University-controlled property includes, without limitation, all streets, alleys, sidewalks, and public ways abutting such property. University-controlled property also includes computers and network systems owned, controlled, or operated by the University or funded by the University.

(33) University Official: An employee of the University, including, without limitation, faculty members and staff members, or, for purposes of this Code, a University-recognized volunteer, when acting in the performance of their duties. Student employees may be considered University officials when acting in the performance of their duties (e.g., event staff, resident assistants, and teaching assistants).

(34) Vice Chancellor for Student Life: The University's chief student affairs officer, to whom the Chancellor has delegated responsibility for the administration of the Code. For the

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

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

(36) Written: To communicate words either on paper and/or electronically. For example, a notice delivered via e-mail constitutes a written notice under the Code.

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

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

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

Date: June 28, 2018

Signature: [signature]

Name of Officer: Matthew Scoggins

Title of Officer: General Counsel

Subscribed and sworn to before me on: June 28, 2018

Notary Public Signature: Lynette Russell

My commission expires on: 12-4-18

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

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

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

Herbert H. Slatery III

Herbert H. Slatery III
Attorney General and Reporter

6/29/2018
Date

Department of State Use Only

Filed with the Department of State on: 6/29/18

Effective on: 9/27/18

Tre Hargett

Tre Hargett
Secretary of State

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