G.O.C. STAFF RULE ABSTRACT

BOARD:	Tennessee Collection Service Board
SUBJECT:	Licensing
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 62-20-104
EFFECTIVE DATES:	November 9, 2015 through June 30, 2016
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	The rulemaking hearing rule removes references to a location manager requirement, which was deleted from Tenn. Code Ann. by Public Chapter 180 of 2013. The rule also provides a process for expedited certification, licensure or registration for applicants who are certain military service members or spouses of military service members as required by Tennessee Code Annotated, Section 4-3-1304(d)-(f).

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.

There were no public comments submitted in writing or presented orally at the rulemaking hearing.

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

1. Overlap, duplicate, or conflict with other federal, state, and local governmental rules:

There will be no overlap, duplication, or conflict with other federal, state or local governmental rules.

2. Clarity, conciseness, and lack of ambiguity in the rule or rules:

The rules are clear in purpose and intended execution. The implementation of the proposed rule change will increase clarity and conciseness and decrease ambiguity in the rules as a whole.

3. Flexible compliance and/or reporting requirements for small businesses:

These rules do not create any new compliance or reporting requirements.

4. Friendly schedules or deadlines for compliance and/or reporting requirements:

The proposed "military applicant" rule will expedite the licensure process for certain military personnel, and in some cases, for the spouses of military personnel. Otherwise, these rules do not set out compliance or reporting requirements.

5. Consolidation or simplification of compliance or reporting requirements:

There are no new compliance and reporting requirements as a result of this amendment.

6. Performances standards for small businesses:

These rules do not set out operational or design standards. As such, there are no performance standards for small businesses as a result of this amendment.

7. Barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs:

It does not appear that these amendments will erect barriers or have other effects which would stifle entrepreneurial activity, curb innovation, or increase costs.

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)

The proposed rule changes are not projected to have any impact on local governments.

Department of State
Division of Publications
312 Rosa L. Parks Avenue, 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: 08-08-15
Rule ID(s): 5998
File Date: 8/11/15
Effective Date: 11/9/15

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 Collection Service Board
Division:	Division of Regulatory Boards, Department of Commerce and Insurance
Contact Person:	Keeling R. Baird
Address:	500 James Robertson Parkway; Nashville, TN
Zip:	37243
Phone:	(615) 532-6303
Email:	Keeling.R.Baird@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**
0320-01	Licensing
Rule Number	**Rule Title**
0320-01-.01	Qualifications of Applicants
0320-01-.02	Examinations
0320-01-.03	Fees

Chapter 0320-01
Collection Service Board, Licensing

Amendments

Rule 0320-01-.01 Qualification of Applicants is amended by deleting paragraphs (1) and (2) in their entirety and by adding new paragraphs (1)-(6) to read as follows:

~~(1) Upon receipt of a completed application for a location manager license for a collection service, the Collection Service Board (or its designees) shall commence an investigation to determine the applicant's fitness to engage in the management of a collection service. Such investigation shall include, but not be limited to:~~

~~(a) Verification of applicant's education;~~

~~(b) Evaluation of applicant's employment history;~~

~~(c) Evaluation of applicant's financial responsibilities with verification through a credit bureau report;~~

~~(d) Contact with former employees;~~

~~(e) Contact with character references.~~

~~(2)~~(1) Upon receipt of a completed application for a license as a collection service, the Collection Service Board (or its designees) shall commence an investigation to determine the applicant's fitness to engage in the collection service business. Such investigation shall include, but not be limited to:

(a) Verification of the applicant's financial statement;

(b) Evaluation of the applicant's financial responsibility with verification through a credit bureau report;

(c) Assessment of the applicant's business background and experience; and

(d) Contact with character references.

(2) An applicant for licensure meeting the requirements of T.C.A. § 4-3-1304(d)(1) may:

(a) Be issued a license under this chapter upon application and payment of all fees required for issuance of a regular license of the same type if, in the opinion of the Board, the requirements for certification or licensure of such other state are substantially equivalent to that required in Tennessee; or

(b) Be issued a temporary permit as described herein if the Board determines that the applicant's license does not meet the requirements for substantial equivalency, but that the applicant could perform additional acts, including - but not limited to - education, training, or experience, in order to meet the requirements for the license to be substantially equivalent. The Board may issue a temporary permit upon application and payment of all fees required for issuance of a regular license of the same type, which shall allow such person to perform services as if fully licensed for a set period of time that is determined to be sufficient for the applicant to complete such requirements.

1. After completing those additional requirements and providing the Board with sufficient proof thereof as may be required, a full license shall be issued to the applicant with an issuance date of the date of the original issuance of the temporary permit and an expiration date as if the full license had been issued at

that time.

2. A temporary permit shall be issued for a period of less than the length of a renewal cycle for a full license.

3. A temporary permit shall expire upon the date set by the Board and shall not be subject to renewal except through the completion of the requirements for substantial equivalency as required by the Board or by an extension of time granted for good cause by the Board.

4. Should an extension to a temporary permit cause the permit to be in effect longer than the renewal cycle of a full license, the holder of the temporary permit shall file a renewal application with such documentation and fees, including completion of continuing education, as are required by the Board for all other renewals of a full license of the same type.

(3) Military education, training, or experience completed by a person described at T.C.A. § 4-3-1304(d)(1)(B)(ii)(a)-(c) shall be accepted toward the qualifications, in whole or in part, to receive any license issued by the Board if such military education, training, or experience is determined by the Board to be substantially equivalent to the education, training, or experience required for the issuance of such license.

(4) Any licensee who is a member of the National Guard or a reserve component of the armed forces of the United States called to active duty whose license expires during the period of activation shall be eligible for renewal upon the licensee being released from active duty without:

(a) Payment of late fees or other penalties;

(b) Obtaining continuing education credits when:

1. Circumstances associated with the person's military duty prevented the obtaining of continuing education credits and a waiver request has been submitted to the Board; or

2. The person performs the licensed or certified occupation as part of such person's military duties and provides documentation sufficient to demonstrate such to the Board, or;

(c) Performing any other similar act typically required for the renewal of a license or certification.

(5) The license, certification, or permit shall be eligible for renewal pursuant to paragraph (4) for six (6) months from the person's release from active duty.

(6) Any person renewing under paragraph (4) shall provide the Board such supporting documentation evidencing activation as may be required by the Board prior to renewal of any license pursuant to that paragraph.

Authority: T.C.A. §§ 62-20-104 and 4-3-1304.

Rule 0320-01-.02 Examinations is amended by deleting the text of the rule in its entirety.

~~(1) Upon being approved by the Collection Service Board, the candidate shall apply to the approved, independent educational testing organization, on the form supplied by the testing organization, accompanied by the testing fee as set by the board, pursuant to its contract with the testing organization, to take the location manager licensing examination.~~

~~(2) The examination for prospective managers of collection service businesses shall cover the following subjects:~~

~~(a) State and federal statutes, rules, and regulations governing the conduct of a collection service business;~~

~~(b) Collection ethics and practices;~~

~~(c) Banking;~~

~~(d) Administrative and Managerial skills;~~

~~(e) Business law; and~~

~~(f) Bankruptcy Law.~~

~~(3) The completed application for a location manager's license and the one hundred dollars ($100.00), non-refundable application fee must be filed in the Collection Service Board office ninety (90) days prior to applicant being scheduled to take the location manager's examination.~~

~~(4) The location manager's license examination shall be administered three (3) times annually, approximately every one hundred twenty (120) days.~~

~~(5) Candidates for the location manager's license wishing to retake the exam after failing must apply to the Board thirty (30) days prior to the exam.~~

Authority: T.C.A. §§ 62-20-104.

Rule 0320-01-.03 Fees is amended by deleting paragraphs (2), (3), and (8) and by renumbering the remaining paragraphs to read as follows:

(1) An application for a collection license as a collection service shall be accompanied by a nonrefundable fee of one hundred fifty dollars ($150.00).

~~(2) An application for a location manager's license shall be accompanied by a non-refundable fee of one hundred dollars ($100.00).~~

~~(4)~~(2) The Board shall grant a collection service license to qualified applicants upon receipt of six hundred dollars ($600.00), which shall not be prorated for any portion of a year.

~~(3) In case of failure, the failing location manager licensing examination candidate shall pay a reexamination fee as set by the board, pursuant to its contract with the testing organization.~~

~~(5)~~(3) Solicitor's identification cards shall be obtainable by written application of the licensee, accompanied by an annual fee of twenty-five dollars ($25.00) each.

~~(6)~~(4) Application for renewal of a collection service license shall be accompanied by a fee of three hundred and fifty dollars ($350.00).

~~(7)(a)~~(5) The fee for each branch office located in this state shall be one hundred dollars ($100.00).

~~(7)(b)~~(6) The renewal fee for each branch office located in this state shall be one hundred dollars ($100.00).

~~(9)~~(7) All licensees shall be subject to late renewal for a period of sixty (60) days following their expiration date by payment of the prescribed fee plus a penalty of one hundred dollars ($100.00).

~~(8) Application for renewal of a location manager license shall be accompanied by a fee of fifty dollars ($50.00).~~

Authority: T.C.A. §§ 62-20-104, 62-20-106, 62-20-109, 62-20-111, and 62-20-112.

* 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)
Chip Hellman	X				
Steve Harb	X				
Elizabeth Dixon	X				
Bart Howard				X	
Elizabeth Trinkler				X	

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Collection Service Board on November 12, 2014, and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 09/12/14

Rulemaking Hearing(s) Conducted on: (add more dates). 11/12/14

Date: 7/24/15

Signature: Keeling R Baird

Name of Officer: Keeling R. Baird

Title of Officer: Assistant General Counsel

JENNACA SMITH
STATE OF TENNESSEE NOTARY PUBLIC
DAVIDSON COUNTY

MY COMMISSION EXPIRES:
March 8, 2016

Subscribed and sworn to before me on: 7/24/15

Notary Public Signature: Jennaca Smith

My commission expires on: 3/8/16

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

Herbert H. Slatery III

Herbert H. Slatery III
Attorney General and Reporter

8/5/2015
Date

RECEIVED
2015 AUG 11 PM 1:17
SECRETARY OF STATE
PUBLICATIONS

Department of State Use Only

Filed with the Department of State on: 08/11/15

Effective on: 11/9/15

Tre Hargett

Tre Hargett
Secretary of State

G.O.C. STAFF RULE ABSTRACT

BOARD**:**	State Board of Education
SUBJECT:	Minimum Requirements for the Approval of Public Schools
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 49-1-302
EFFECTIVE DATES:	November 9, 2015 through June 30, 2016
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	The proposed rule adds Cambridge International Examinations courses as a pathway for students to earn a Tennessee diploma and allows students completing the Cambridge International Examinations courses the ability to graduate with "state distinction". According to the Board, the Cambridge International Examinations courses are comparable in rigor to those offered by the International Baccalaureate and College Board's Advanced Placement programs. The Board represents that Cambridge International Examinations courses are currently offered in Metro Nashville and Bradley County public schools.

.

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.

Not applicable.

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 will have no impact on local governments.

Department of State
Division of Publications
312 Rosa L. Parks Avenue, 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: 08-09-15
Rule ID(s): 5999
File Date: 8/11/15
Effective Date: 11/9/15

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 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.

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:	State Board of Education
Division:	
Contact Person:	Angie Sanders
Address:	1st Floor, Andrew Johnson Tower 710 James Robertson Parkway Nashville, TN
Zip:	37243
Phone:	615-253-5707
Email:	Angela.C.Sanders@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**
0520-01-03	Minimum Requirements for the Approval of Public Schools
Rule Number	**Rule Title**
0520-01-03-.05	State Curriculum, Requirement D
0520-01-03-.06	Graduation, Requirement E

Chapter Number	**Chapter Title**
Rule Number	**Rule Title**

0520-01-03-.05 STATE CURRICULUM, REQUIREMENT D

(3) Grading and Promotion.

(a) Each school shall evaluate and report in writing to the parent(s) or legal guardian(s) each student's progress in each subject, at least every nine weeks, in accordance with the school system's evaluation plan. A parent or legal guardian will sign or otherwise acknowledge the report and return it to the teacher. Local school systems may choose not to require parental acknowledgement of the grade report for students in grades seven through twelve (7-12). If parental acknowledgement is not required, schools must publish annually the dates and method of reporting student progress and must provide ample opportunities for parents to notify the school of any concerns.

(b) Local school systems shall develop and implement grading, promotion, and retention policies for grades kindergarten through eight (K-8). The policies shall be communicated annually to students and parents.

(c) Local school systems shall use the following uniform grading system for students enrolled in grades nine through twelve (9-12). Students' grades shall be reported for the purposes of application for postsecondary financial assistance administered by the Tennessee Student Assistance Corporation using the uniform grading system.

Uniform Grading System – Weighting for Advanced Coursework				
Grade	% Range	Honors Courses & National Industry Certification	Statewide Dual Credit Courses	Advanced Placement, Cambridge, & International Baccalaureate
A	93 – 100	May include the addition of three (3) percentage points to the grades used to calculate the semester average.	May include the addition of four (4) percentage points to the grades used to calculate the semester average.	May include the addition of five (5) percentage points to the grades used to calculate the semester average.
B	85 – 92			
C	75 – 84			
D	70 – 74			
F	0 – 69			

Assigning additional quality points above 4.0 for honors ~~courses~~, AP, Cambridge International Examinations, IB, and National Industry Certification courses is not allowed for the purpose of determining eligibility for the lottery scholarships.

All course types, as defined below, shall be used for reporting student grades for the determination of eligibility for HOPE scholarships.

(d) State approved courses shall meet all appropriate content standards, learning expectations, and performance indicators as approved by the State Board of Education and are eligible for the points listed above.

(e) Local education agencies may elect to offer honors courses and National Industry Certification

(NIC) courses. Local educational agencies electing to offer honors courses will ensure that the approved honors courses substantially exceed the content standards, learning expectations, and performance indicators as approved by the State Board of Education. Further, each local education agency offering honors courses will ensure that additional rigor is being provided by implementing the framework of standards for honors courses listed below:

1. Honors courses will substantially exceed the content standards, learning expectations, and performance indicators approved by the State Board of Education. Teachers of honors courses will model instructional approaches that facilitate maximum interchange of ideas among students: independent study, self-directed research and learning, and appropriate use of technology. All honors courses must include multiple assessments exemplifying coursework (such as short answer, constructed-response prompts, performance-based tasks, open-ended questions, essays, original or creative interpretations, authentic products, portfolios, and analytical writing). Additionally, an honors course shall include a minimum of five (5) of the following components:

   (i) Extended reading assignments that connect with the specified curriculum.

   (ii) Research-based writing assignments that address and extend the course curriculum.

   (iii) Projects that apply course curriculum to relevant or real-world situations. These may include oral presentations, power point, or other modes of sharing findings. Connection of the project to the community is encouraged.

   (iv) Open-ended investigations in which the student selects the questions and designs the research.

   (v) Writing assignments that demonstrate a variety of modes, purposes, and styles.

      (I) Examples of mode include narrative, descriptive, persuasive, expository, and expressive.

      (II) Examples of purpose include to inform, entertain, and persuade.

      (III) Examples of style include formal, informal, literary, analytical, and technical.

   (vi) Integration of appropriate technology into the course of study.

   (vii) Deeper exploration of the culture, values, and history of the discipline.

   (viii) Extensive opportunities for problem solving experiences through imagination, critical analysis, and application.

   (ix) Job shadowing experiences with presentations which connect class study to the world of work.

   All course types which meet the above framework will be classified as honors, eligible for additional percentage point weighting.

   Career and technical courses that offer a National Industry Certification through a

nationally recognized examination may be weighted by adding three (3) points to all grades used to calculate the semester average.

If honors courses and courses that offer National Industry Certification are offered, the local education agency shall annually approve the list of such courses. This list of National Industry Certification courses and of approved honors courses with a complete syllabus for each course shall be approved by the local education agency and made readily available to the public.

Each local education agency shall adopt policies for honors courses and career and technical courses that offer national industry certification that may allow for the addition of three (3) points to all grades used to calculate the semester average.

2. A statewide dual credit course is an existing high school course that incorporates postsecondary learning objectives and is aligned with an approved dual credit challenge exam. Students who pass these challenge exams will earn college credit accepted by all Tennessee public postsecondary institutions. Local education agencies must ensure all statewide dual credit courses incorporate the postsecondary learning objectives and that all students sit for the challenge exam. The courses must provide advanced learning opportunities for students. Local education agencies will also ensure that statewide dual credit teachers receive professional development and support to provide the rigorous level of instruction necessary for the courses.

3. Local education agencies may elect to offer Advanced Placement, Cambridge International Examinations, and International Baccalaureate courses. If Advanced Placement, Cambridge International Examinations, and International Baccalaureate courses are offered, the local education agency shall annually approve a list of such courses. This list of approved courses shall be made readily available to the public. Local education agencies will ensure that approved courses substantially incorporate the learning objectives and course descriptions as defined by the College Board, Cambridge International Examinations, or International Baccalaureate ~~Agency~~ Organization.

   Each local education agency shall adopt policies for the approved Advanced Placement courses, Cambridge International Examinations courses, and International Baccalaureate courses that have end-of-course national examinations that may allow for the addition of five (5) points to all grades used to calculate semester averages. Only Advanced Placement, Cambridge International Examinations, and International Baccalaureate courses that have end-of-course national examinations qualify for the addition of five (5) points.

(f) In order to ensure fidelity to the Uniform Grading System in the calculation of the Grade Point Average (GPA) to be used in the determination of eligibility for the HOPE Scholarship, the following guidance is given for implementation by each Local Education Agency (LEA):

1. When determining the grade to be awarded, numerical averages with a decimal point of .5 or higher shall be rounded up to a whole number and a decimal point of .49 or lower shall not be rounded up. For example, a numerical average in a course of 92.50 shall be rounded up to a 93 and awarded an A for the GPA calculation. Further, a numerical average of 92.49 shall not be rounded up and awarded a 92 or B for the GPA calculation. This methodology shall apply to reporting period grades as well as semester and/or final average grades.

2. The addition of percentage points to weight honors courses, National Industry Certification, statewide dual credit courses, Advanced Placement courses, Cambridge and International Baccalaureate courses should be made at each reporting period as well as to any semester exam or other grade used to determine the semester average. Do not add to the semester or final average since the points are already in the grade.

   Example: An AP class where the semester average is calculated by adding each six weeks grade twice and adding the semester exam grade once and dividing by 7:

1st Six Weeks	2nd Six Weeks	3rd Six Weeks	Sem. Exam	Sem. Avg.
88 + 5 = 93	90 + 5 = 95	85 + 5 = 90	89 + 5 = 94	93

$$93 + 93 + 95 + 95 + 90 + 90 + 94 = 650$$

$$\text{Sem. Avg.} = \frac{650}{7} = 92.8 = 93 = A$$

3. Calculation of the uniform grading system GPA shall be on a 4.0 scale by assigning the following grade points: A = 4, B = 3, C = 2, D = 1 and F = 0. The GPA is the official method for calculating HOPE Scholarship eligibility, and shall be calculated by multiplying the quality points assigned to each course for the semester, trimester, or final course average (for the block schedule) by the credit available for each course and dividing by the total number of credits available. This calculation shall be based on grades at the end of any semester or trimester, not on a grade that spans the entire school year.

   This example represents a student's final average GPA based upon a six-period day with five year-long courses and two semester-long courses

   $$\text{GPA} = \frac{\text{Sum of Grade Points for Each Course}}{\text{Sum of Credits Available}} \text{ (per credit)}$$

   $$\text{GPA} = \frac{B+A+A+B+B+B+C}{1+1+1+1+1+.5+.5} = \frac{3(1)+4(1)+4(1)+3(1)+3(1)+3(.5)+2(.5)}{6}$$

   $$\text{GPA} = \frac{19.5}{6} = 3.25 \text{ GPA}$$

4. For purposes of the HOPE Scholarship Eligibility Grade Point Average, a student may repeat any failed course and the failing grade for the first attempt will not be considered in the HOPE Scholarship Eligibility Grade Point Average calculation. The grade of all repeats of the course shall be counted as part of the HOPE Scholarship Eligibility Grade Point Average. LEAs may allow students to replace failed course grades through credit recovery or similar programs without HOPE Scholarship Eligibility Grade Point Average penalty and is not to be considered a repeat.

5. The GPA shall be reported to the nearest 100th. The thousandth digit must be a 5 or higher to round up to the next hundredth. For example, a GPA of 3.296 would round up to 3.30. A GPA of 3.2949 would round down to 3.29.

6. The GPA used to determine eligibility for the HOPE Scholarship shall be reported on the student's transcript as "Hope Scholarship GPA."

7. The Department of Education will provide guidance for LEAs to insure this rule is implemented uniformly across Tennessee.

8. The Department of Education will monitor the calculation of the HOPE Scholarship GPA as part of the routine LEA audits.

0520-01-03-.06 GRADUATION, REQUIREMENT E

(c) Graduation with Honors, State Honors, and State Distinction

1. School systems may design student recognition programs that allow students to graduate with honors if they have met the graduation requirements and have obtained an overall grade point average of at least a 3.0 or higher on a 4.0 scale. School systems may set a higher GPA at their discretion. School systems may specify additional requirements, such as requiring students to demonstrate performance of distinction in one (1) or more areas.

   Students who score at or above all the subject area readiness benchmarks on the ACT or equivalent score on the SAT will graduate with state honors.

2. Each local school board shall develop a policy prescribing how students graduating with "state honors" will be noted and recognized.

3. Students will be recognized as graduating with "state distinction" by attaining a B or better average and completing one of the following:

   (i) earn a nationally recognized industry certification
   (ii) participate in at least one (1) of the Governor's Schools
   (iii) participate in one (1) of the state's ALL State musical organizations
   (iv) be selected as a National Merit Finalist or Semi-Finalist
   (v) attain a score of thirty one (31) or higher composite score on the ACT
   (vi) attain a score of three (3) or higher on at least two advanced placement exams
   (vii) successfully complete the International Baccalaureate Diploma Programme
   (viii) earn twelve (12) or more semester hours of transcripted postsecondary credit
   (ix) successfully complete the Cambridge International Examinations Pathway to TN Diploma

   Each local school board shall develop a policy prescribing how students graduating with "state distinction" will be noted and recognized.

* 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)
Chancey				X	
Edwards	X				
Hartgrove	X				
Johnson	X				
Pearre	X				
Roberts	X				
Rolston	X				
Tucker	X				
Troutt	X				
Student Member				X	

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the State Board of Education on 04/10/2015, and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of ninety (90) days of the filing of the proposed rule with the Secretary of State.

Date: 7/20/15

Signature:

Name of Officer: Dr. Sara Heyburn

Title of Officer: Executive Director

PHYLLIS E. CHILDRESS STATE OF TENNESSEE NOTARY PUBLIC DAVIDSON COUNTY

MY COMMISSION EXPIRES: January 9, 2016

Subscribed and sworn to before me on: 7/20/15

Notary Public Signature:

My commission expires on:

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

Herbert H. Slatery III
Attorney General and Reporter

8/5/2015
Date

RECEIVED
2015 AUG 11 AM 10:34
SECRETARY OF STATE
PUBLICATIONS

Department of State Use Only

Filed with the Department of State on: 8/11/15

Effective on: 11/9/15

Tre Hargett
Secretary of State

G.O.C. STAFF RULE ABSTRACT

COMMISSION**:**	Private Investigation and Polygraph Commission
SUBJECT:	Applicants for Licenses
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 62-26-303
EFFECTIVE DATES:	November 12, 2015 through June 30, 2016
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	The proposed rule provides a process for expedited certification, licensure or registration for applicants who are certain military service members or spouses of military service members as required by Tennessee Code Annotated, Section 4-3-1304(d)-(f).

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

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

These rules are not expected to have a measurable impact on the cost to small businesses.

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

There are no projected reporting, recordkeeping or other administrative costs required for these proposed rules.

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

There is no expected adverse impact on small businesses as a result of these proposed rules. The proposed rules are expected to assist with the protection of the welfare of the citizens of the State of Tennessee by seeking to make it easier for military applicants and their spouses who hold private investigation, polygraph, or similar licenses in other states to obtain their private investigation or polygraph licenses in Tennessee and thus more easily obtain employment here.

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

There are no less burdensome, less intrusive, or less costly alternative methods known that will achieve the purpose and objectives of these proposed rules.

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

This rule is being adopted pursuant to the requirements set forth in T.C.A. § 4-3-1304.

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

Any possible exemption of small businesses from these rules would result in less protection for the citizens of the State of Tennessee.

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)

The commission does not foresee any impact on local government by the promulgation of this Rule.

Department of State
Division of Publications
312 Rosa L. Parks Avenue, 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: 08-13-15
Rule ID(s): 0001
File Date: 08/14/15
Effective Date: 11/12/15

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 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.

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:	Private Investigation and Polygraph Commission
Division:	Division of Regulatory Boards Department of Commerce and Insurance
Contact Person:	Anthony Glandorf
Address:	Davy Crockett Tower 500 James Robertson Pkwy Nashville, Tennessee
Zip:	37243
Phone:	615-741-3072
Email:	Anthony.glandorf@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**
1175-01	Private Investigation and Polygraph Commission
Rule Number	**Rule Title**
1175-01-.04	Applicants for Licenses

Rule 1175-01-.04 Applicants for Licenses is amended by adding new paragraphs (10), (11), (12) and (13) that read:

(10) An applicant for licensure meeting the requirements of T.C.A. § 4-3-1304(d)(1) may:

(a) Be issued a license upon application and payment of all fees required for the issuance of such license, if, in the opinion of the commission, the requirements for licensure of such other state are substantially equivalent to that required in Tennessee; or

(b) Be issued a temporary permit as described herein if the commission determines that the applicant's license does not meet the requirements for substantial equivalency, but that the applicant could perform additional acts, including -- but not limited to -- education, training, or experience, in order to meet the requirements for the license to be substantially equivalent. Under these circumstances, the commission may issue a temporary permit upon application and payment of all fees required for issuance of a regular license of the same type, which shall allow such person to perform services as if fully licensed for a set period of time that is determined to be sufficient by the commission for the applicant to complete such requirements.

1. After completing those additional requirements and providing the commission with sufficient proof thereof as may be required, a full license shall be issued to the applicant with an issuance date of the original issuance of the temporary permit and an expiration date as if the full license had been issued at that time.

2. A temporary permit shall be issued for a period no longer than the length of a renewal cycle for a full license of the same type.

3. A temporary permit shall expire upon the date set by the commission and shall not be subject to renewal except through the completion of the requirements for substantial equivalency as required by the commission or by an extension of time granted by the commission for good cause.

4. Should an extension to a temporary permit cause the permit to be in effect longer than the renewal cycle of a full license, then the holder of the temporary permit shall file a renewal application with such documentation and fees, including completion of continuing education, as are required by the commission for all other renewals of a full license of the same type.

(c) Military education, training, or experience completed by a person described at T.C.A. § 4-3-1304(d)(1)(B)(ii)(a)-(c) shall be accepted toward the qualifications, in whole or in part, to receive any license issued by the commission if such military education, training, or experience is determined by the commission to be substantially equivalent to the education, training, or experience required for the issuance of such license.

(11) Any licensee who is a member of the National Guard or a reserve component of the armed forces of the United States called to active duty whose license expires during the period of activation shall be eligible to be renewed upon the licensee being released from active duty without:

(a) Payment of late fees or other penalties; or

(b) Obtaining continuing education credits when:

1. Circumstances associated with the person's military duty prevented the obtaining of

continuing education credits and a waiver request has been submitted to the commission; or

2. The person performs the licensed or certified occupation as part of such person's military duties and provides documentation sufficient to demonstrate such to the commission.

(12) The license, certification or permit shall be eligible for renewal pursuant to Paragraph (11) for six (6) months from the person's release from active duty.

(13) Any person renewing under Paragraph (11) shall provide the commission such supporting documentation evidencing activation as may be required by the commission prior to the renewal of any license pursuant to Paragraph (11).

Authority: T.C.A. §§ 4-3-1304(d)(1); 62-6-303(a).

* 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)
Minnie Ann Lane	X				
Alan G. Rousseau	X				
David Brown, Jr.	X				
Larry T. Flair, Sr.	X				
David W. Horton	X				
William Rick Jones	X				
Jerry Richards, Jr.	X				
Dr. Paul A. Ritch	X				
Walt Valentine	X				

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Tennessee Private Investigation and Polygraph Commission on 2/14/2014, 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.

VANESSA HUNTSMAN
STATE OF TENNESSEE NOTARY PUBLIC
SUMNER COUNTY
MY COMMISSION EXPIRES 11-21-2017

Date: 7/24/2015

Signature: [signature]

Name of Officer: Anthony M. Standiford

Title of Officer: Chief Counsel

Subscribed and sworn to before me on: 07/24/2015

Notary Public Signature: Vanessa Huntsman

My commission expires on: 11/21/2017

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.

[signature]

Herbert H. Slatery III
Attorney General and Reporter

8/7/2015
Date

RECEIVED
2015 AUG 14 PM 3:56
SECRETARY OF STATE
PUBLICATIONS

Department of State Use Only

Filed with the Department of State on: 08/14/15

Effective on: 11/12/15

[signature]

Tre Hargett
Secretary of State

G.O.C. STAFF RULE ABSTRACT

BOARD**:**	Board of Respiratory Care
SUBJECT:	General Rules and Regulations Governing Respiratory Care Practitioners
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 63-27-104(a)(1)
EFFECTIVE DATES:	November 26, 2015 through June 30, 2016
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	The rulemaking hearing rule updates references to accrediting entities for respiratory therapists, increases the number of continuing education hours that respiratory therapists and assistants must complete annually from 10 to 12 by adding at least one hour in patient safety and at least one hour in professional ethics, updates the list of preapproved continuing education providers, requires that at least five hours of annual continuing education be obtained through live presentations, and reduces the maximum duration of temporary licenses from 12 to six months.

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.

There were two comments received regarding this rulemaking hearing.

The first comment came from Coleen Schanabker, a representative of the American Association of Respiratory Care, who highly approved of the rules, noting that the trend across the nation was for the rules to center around ethics and patient safety.

Lastly, John P. Williams, representing the Tennessee Society for Respiratory Care (TSRC), submitted a written comment and addressed the Board in person with a proposed correction to the amendment to subparagraph (3)(c) of rule 1330-01-.05 [Qualifications and Procedures for Licensure]. The organization proposed adding a reference to the Commission on Accreditation for Respiratory Care because CAAHEP was not in existence before November 2009. Many therapists who gained licensure did so through programs offered by the Commission on Accreditation for Respiratory Care before 2009. The Board voted to accept this change. Mr. Williams stated that the rules contained good changes in general and were a step forward in terms of continuing education. He additionally supported the rules as being thoroughly vetted and stated that the end result is good.

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.

Regulatory Flexibility Analysis

1. The extent to which the rule or rules may overlap, duplicate, or conflict with other federal, state, and local governmental rules.

These rules do not overlap, duplicate, or conflict with other federal, state, and local governmental rules.

2. Clarity, conciseness, and lack of ambiguity in the rule or rules.

These rules exhibit clarity, conciseness, and lack of ambiguity.

3. The establishment of flexible compliance and/or reporting requirements for small business.

The compliance requirements contained in the rules are the same for large or small businesses and are as flexible as possible while still allowing the Board to achieve its mandated mission of protecting the health, safety, and welfare of Tennesseans.

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

Compliance requirements contained in the rules are the same for large or small businesses, and are as friendly as possible to small businesses while still allowing the Board to fulfill their charge to protect the public through monitoring the continuing education process for Respiratory Therapists. The change to rule 1330-01-.12(3)(c) enables small or large businesses to seek Board approval of their education courses on a more convenient schedule.

5. The consolidation or simplification of compliance or reporting requirements for large or small businesses.

Compliance requirements contained in the rules are the same for large or small businesses.

6. The establishment of performance standards for small businesses as opposed to design or operational standards required in the proposed rules.

These rules do not establish performance, design, or operational standards.

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

These rules do not create unnecessary barriers or stifle entrepreneurial activity or innovation.

STATEMENT OF ECONOMIC IMPACT TO SMALL BUSINESSES

Name of Board, Committee or Council: Tennessee Board of Respiratory Care

Rulemaking hearing date: August 28, 2014

1. **Type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, and/or directly benefit from the proposed rule:**

   The Board does not anticipate that there will be costs to small businesses other than the costs to Respiratory Therapists to pay for the additional required hours of continuing education classes. Respiratory Therapists who are sole proprietors and businesses that employ them, such as hospitals, will be affected. There are Four Thousand, Seven hundred and Thirty (4,730) Respiratory Therapists actively licensed in Tennessee. These therapists and any employers who may pay a portion of the therapist's continuing education fee will bear the cost of this rule change. However, the cost of the two additional hours will be minimal. Continuing Education providers may also be affected by directly benefiting from the opportunity to provide more types and hours of coursework.

2. **Projected reporting, recordkeeping and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record:**

   The proposed amendments have no increased or new reporting, recordkeeping, or other administrative costs that are required for compliance.

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

   The increased number of required hours for continuing education will impact all Respiratory Therapists and thereby any that are sole proprietors of their own business as wells as any programs or hospitals that may pay any portion of continuing education fees by requiring payment for two additional education hours. Self-employed Respiratory Therapists and businesses that employ them will be benefited by improved knowledge in respiratory care in general and in the fields of patient safety and care particularly. Those who offer the continuing education coursework will also be benefitted by these additional required hours as their offerings can increase.

4. **Description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and/or objectives of the proposed rule that may exist, and to what extent, such alternative means might be less burdensome to small business:**

   The goal of these rules amendments is to improve Respiratory Therapists' continuing education and training in the areas of patient care and safety; there is no less burdensome method of requiring further education for that purpose.

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

   Federal: The Board is not aware of any federal counterparts.

   State: The Board is not aware of any direct state counterparts. However, some Respiratory Care Boards in other neighboring states have as many if not more hours of continuing education, for example: Georgia has 30 hours required biennially, Alabama requires 24 biennially, Kentucky requires 24 biennially, North Carolina requires 24 biennially, and South Carolina requires 30 biennially. Additionally, many other Tennessee Health Related Boards require a significant amount of continuing education, for example: Board of Chiropractic Examiners requires 48 biennially, the Board of Optometry requires 30 biennially, the Board of Athletic Trainers requires 50 biennially, the Massage Licensure Board requires 25 biennially, and the Board of Examiners for Nursing Home Administrators requires 36 biennially.

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

The rule change does not provide for any exemptions.

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)

The proposed rule amendments should not have a financial impact on local governments.

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

For Department of State Use Only

Sequence Number: 08-35-15
Rule ID(s): 6012
File Date: 08/28/15
Effective Date: 11/26/15

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing. T.C.A. § 4-5-205

Agency/Board/Commission:	Board of Respiratory Care
Division:	
Contact Person:	Mary Katherine Bratton, Assistant General Counsel
Address:	665 Mainstream Drive, Nashville, Tennessee
Zip:	37234
Phone:	(615) 741-1611
Email:	Mary.Bratton@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**
1330-01	General Rules and Regulations Governing Respiratory Care Practitioners
Rule Number	**Rule Title**
1330-01-.01	Definitions
1330-01-.02	Scope of Practice
1330-01-.05	Qualifications and Procedures for Licensure
1330-01-.12	Continuing Education
1330-01-.14	Temporary License
1330-01-.19	Board Officers, Consultants, Records, Declaratory Orders, Advisory Rulings, Subpoenas, and Screening Panels

RULES
OF
THE TENNESSEE BOARD OF RESPIRATORY CARE
DIVISION OF HEALTH RELATED BOARDS

CHAPTER 1330-01
GENERAL RULES AND REGULATIONS GOVERNING
RESPIRATORY CARE PRACTITIONERS

TABLE OF CONTENTS

1330-01-.01	Definitions	1330-01-.15	Disciplinary Grounds, Actions, and Civil Penalties
1330-01-.02	Scope of Practice	1330-01-.16	License
1330-01-.03	Delivery of Respiratory Equipment to a Patient's Place of Residence	1330-01-.17	Change of Name and/or Address
1330-01-.04	Reserved	1330-01-.18	Mandatory Release of Patient Records
1330-01-.05	Qualifications and Procedures for Licensure	1330-01-.19	Board Officers, Consultants, Records, Declaratory Orders, Advisory Rulings, Subpoenas, and Screening Panels
1330-01-.06	Fees	1330-01-.20	Advertising
1330-01-.07	Application Review, Approval, and Denial	1330-01-.21	Upgrading Classification Requirements
1330-01-.08	Reserved	1330-01-.22	ABG Endorsement
1330-01-.09	Renewal of License	1330-01-.23	Consumer Right-To-Know Requirements
1330-01-.10	Supervision	1330-01-.24	Endorsement of Respiratory Therapists to Provide Polysomnographic Services
1330-01-.11	Retirement and Reinstatement of License		
1330-01-.12	Continuing Education		
1330-01-.13	Reserved		
1330-01-.14	Temporary License		

1330-01-.01 DEFINITIONS. As used in these rules, the following terms and acronyms shall have the following meaning ascribed to them:

(1) ABG - Arterial Blood Gas.

(2) ABG Endorsement - Endorsed by the Board to perform analysis of blood and other materials.

(3) Applicant - Any individual seeking licensure by the Board who has submitted an official application and paid the application fee.

(4) Board - The Tennessee Board of Respiratory Care.

(5) Board Consultant - Any individual authorized by the Board to do the following acts:

(a) To conduct a review of the qualifications of an applicant for a license or temporary license to practice respiratory care in Tennessee, to make an initial determination as to whether the applicant has met all the requirements to practice respiratory care in Tennessee, and to issue temporary authorizations to practice in accordance with T.C.A. § 63-27-116; and

(b) To decide the following:

1. What, if any, investigation should be instituted upon complaints received by the Division;

2. What, if any, disciplinary actions should be instituted upon investigations conducted by the Division;

3. What, if any, terms of settlements should be offered in formal disciplinary matters based upon investigations conducted by the Division. A proposed settlement will not become final unless it is subsequently ratified by the board.

(Rule 1330-01-.01, continued)

(6) Board Designee - Any individual authorized by the Board to conduct a review of the qualifications of an applicant for a license or temporary license to practice respiratory care in Tennessee, to make an initial determination as to whether the applicant has met all the requirements to practice respiratory care in Tennessee, and to issue temporary authorizations to practice in accordance with T.C.A. § 63-1-142.

~~(7) Board Office - The office of the Unit Director assigned to the Board located at 665 Mainstream Drive, Nashville, TN 37243.~~

(7) Board Office - The office of the Unit Director assigned to the Board.

Formatted: Indent: Left: 0.38", Hanging: 0.37"

(8) C.A.A.H.E.P. - The Commission on Accreditation of Allied Health Education Programs.

(9) Certificate - Document issued by the Board to an applicant who has completed the certification process. The certificate takes the form of an artistically designed certificate as well as other versions bearing an expiration date.

(10) Co.A.R.C. - The Committee on Accreditation for Respiratory Care.

(11) Department - Tennessee Department of Health.

(12) Division - The Division of Health Related Boards, in the Department of Health, responsible for all administrative, fiscal, inspectional, clerical and secretarial functions of the health related boards enumerated in T.C.A. § 68-1-101.

(13) Fee - Money, gifts, services, or anything of value offered or received as compensation in return for rendering services; also, the required fees set forth in rule 1330-01-.06.

(14) He/she Him/her - When used in the text of these rules represents both the feminine and masculine genders.

(15) HRB - Health Related Boards.

(16) In Good Standing - The status of a license or permit which is current in the payment of all fees, administrative requirements and which is not subject to disciplinary action.

~~(17) J.C.A.H.O. - The Joint Committee on Accreditation of Health Care Organizations.~~

(17) T.J.C. - The Joint Commission previously known as the Joint Committee on Accreditation of Health Care Organizations.

(18) License - Document issued by the Board to an applicant who has completed the process for licensure, or temporary licensure, or licensure by endorsement. The license takes the form of an artistically designed license as well as other versions bearing an expiration date.

(19) Licensee - Any person who has been lawfully issued a license, temporary license or a license by endorsement pursuant to T.C.A. § 63-27-116 (c) to practice.

(20) Life Support Systems - A term synonymous with "life support equipment" which, for purposes of the licensure exemption allowed for licensed practical nurses, means any and all of the following:

(a) Any type of mechanical ventilator.

(b) Continuous Positive Airway Pressure or Bi-Positive Airway Pressure devices.

(Rule 1330-01-.01, continued)

(c) Cardiopulmonary monitors.

(d) All oxygen delivery devices except nasal cannula.

(21) Maintain - For purposes of the licensure exemption allowed for licensed practical nurses, means the setting up, attaching to or replacement of devices onto a life support system, and includes initiation of, replacement of and/or maintenance on any type of life support system.

(22) Manage - For purposes of the licensure exemption allowed for licensed practical nurses means the making of adjustments to the controls or settings of any life support system.

(23) NBRC - National Board for Respiratory Care.

(24) Person - Any individual, firm, corporation, partnership, organization, or body politic.

(25) Practice of Respiratory Care – Shall have the same meaning as set forth in T.C.A. § 63-27-102 (4).

(26) Respiratory Care Practitioner – Shall have the same meaning as set forth in T.C.A. § 63-27-102 (7).

(27) Successfully Completed A Respiratory Care Educational Program - Having completed the required course work, received passing grades and met other administrative requirements of a respiratory care educational program. "Respiratory care educational program" is defined in T.C.A. § 63-27-105 and is applicable to registered and certified respiratory therapists pursuant to T.C.A. § 63-27-105.

(28) Use of Title or Description - To hold oneself out to the public as having a particular status by means signs, mailboxes, address plates, stationary, announcements, business cards, or other means of professional identification.

(29) Written Evidence - Includes, but is not limited to, written verification from supervisors or other colleagues familiar with the applicant's work.

Authority: *T.C.A. §§4-5-202, 4-5-204, 63-1-101, 63-1-107 (d), 63-1-115, 63-1-132, 63-1-142, 63-27-102, 63-27-104, 63-27-105, 63-27-113, and 63-27-116.* ***Administrative History:*** *Original rule filed January 31, 2000; effective April 15, 2000. Amendment filed March 20, 2001; effective June 3, 2001. Amendment filed September 26, 2001; effective December 10, 2001. Amendment filed March 27, 2003; effective June 10, 2003. Amendment filed April 17, 2003; effective July 1, 2003.*

1330-01-.02 SCOPE OF PRACTICE.

(1) The scope of practice for registered respiratory therapist, certified respiratory therapist or assistant is defined in T.C.A. § 63-27-102 (3) and (4), and T.C.A. §§ 63-27-106, 107 and 108.

(2) Use of Titles

~~(a) Only a certified respiratory therapist who is a member of the National Board of Respiratory Care (NBRC) and who possesses a valid, current and active license issued by the Board that is not suspended or revoked has the right to use the titles and/or acronyms "Certified Respiratory Therapist (CRT)" or "Certified Respiratory Therapy Technician (CRTT)" as defined in T.C.A. § 63-27-102.~~

(Rule 1330-01-.02, continued)

(a) Only a certified respiratory therapist who has an active credential with the National Board of Respiratory Care (NBRC) and who possesses a valid, current and active license issued by the Board that is not suspended or revoked has the right to use the title and/or acronym "Certified Respiratory Therapist (CRT)" as defined in T.C.A. § 63-27-102.

Formatted: Normal

~~(b) Only a registered respiratory therapist who is a member of the National Board of Respiratory Care (NBRC) and who possesses a valid, current and active license issued by the Board that is not suspended or revoked has the right to use the title and/or acronym "Registered Respiratory Therapist (RRT)" as defined in T.C.A. § 63-27-102.~~

(b) Only a registered respiratory therapist who has an active credential with the National Board of Respiratory Care (NBRC) and who possesses a valid, current and active license issued by the Board that is not suspended or revoked has the right to use the title and/or acronym "Registered Respiratory Therapist (RRT)" as defined in T.C.A. § 63-27-102.

(c) Any person who possesses a valid, current and active license issued by the Board that is not suspended or revoked has the right to practice as a respiratory care practitioner as defined in T.C.A. § 63-27-102.

(d) Any person licensed by the Board to whom this rule applies must use one of the titles authorized by this rule in every advertisement he or she publishes. Failure to do so may constitute an omission of a material fact which makes the advertisement misleading and deceptive and subjects the practitioner to disciplinary action pursuant to T.C.A. § 63-27-112 (a) (2) and (9).

Authority: *T.C.A. §§4-5-202, 4-5-204, 63-1-145, 63-1-146, 63-27-102, 63-27-104, 63-27-106, 63-27-107, 63-27-108, 63-27-111, and 63-27-112.* ***Administrative History:*** *Original rule filed January 31, 2000; effective April 15, 2000. Amendment filed March 20, 2001; effective June 3, 2001. Amendment filed June 16, 2006; effective August 30, 2006. Amendment filed February 22, 2010; effective May 23, 2010.*

1330-01-.03 DELIVERY OF RESPIRATORY EQUIPMENT TO A PATIENT'S PLACE OF RESIDENCE.

(1) When respiratory equipment is delivered and installed in a patient's place of residence, the following acts constitute the practice of respiratory care because they are a part of the administration of medical gasses:

(a) Initial patient assessment;

(b) Attachment of the respiratory equipment to the patient;

(c) Ongoing assessment of the patient's response to the administration of the medical gas;

(d) Initial and ongoing instruction and education of the patient (and of the patient's family or other caregiver, where relevant) with respect to the role of the respiratory equipment in managing the patient's disease or condition; and

(e) Recommendation to the physician of needed modifications in the physician's order.

(2) When respiratory equipment is delivered and installed in a patient's place of residence, the following acts do not constitute the practice of respiratory care:

(a) Delivery of respiratory equipment and supplies (initial and replacement) to the patient's place of residence;

(Rule 1330-01-.03, continued)
Authority: *T.C.A. §§ 4-5-202, 4-5-204, 63-27-102, 63-27-104, 63-27-105, 63-27-110, and 63-27-117.*
Administrative History: *Original rule filed June 16, 2006; effective August 30, 2006.*

1330-01-.04 RESERVED.

1330-01-.05 QUALIFICATIONS AND PROCEDURES FOR LICENSURE. To become licensed as a respiratory care practitioner in Tennessee, a person must comply with the following procedures and requirements:

(1) All applicants for all levels of licensure must comply with the following:

(a) A current application packet shall be requested from the Board office.

(b) An applicant shall respond truthfully and completely to every question or request for information contained in the application form and submit it along with all documentation and fees required by the form and this rule to the Board office.

(c) Applications for licensure will be accepted throughout the year. All supporting documents requested in these instructions must be received in the Board office within sixty (60) days of receipt of the application or the file will be closed.

(d) An applicant shall pay, at the time of application, the non-refundable application fee, state regulatory fee and if applicable reciprocity or testing fee as provided in rule 1330-01-.06.

(e) An applicant shall submit with his application a "passport" style photograph taken within the preceding twelve (12) months.

(f) An applicant shall attest on his application that he has attained at least eighteen (18) years of age.

(g) An applicant shall disclose the circumstances surrounding any of the following:

1. Conviction of any criminal law violation of any country, state or municipality, except minor traffic violations.

2. The denial of licensure or certification application by any other state or the discipline of licensure in any state.

3. Loss or restriction of licensure or certification in this or in any other state.

4. Any civil suit judgment or civil suit settlement in which the applicant was a party defendant including, without limitation, actions involving malpractice, breach of contract, antitrust activity or any other civil action remedy recognized under the country's or state's statutory common, or case law.

5. To the extent known by the applicant, the circumstance involved in any pending investigation of licensure or certification by any state.

(h) An applicant shall cause to be submitted to the Board's administrative office directly from the vendor identified in the Board's licensure application materials, the result of a criminal background check.

(i) If an applicant holds or has ever held a license or certification to practice respiratory care or any other profession in any other state, the applicant shall cause to be

(Rule 1330-01-.05, continued)

submitted the equivalent of a Tennessee Certificate of Endorsement (verification of licensure or certification) from each such licensing board which indicates the applicant holds or held an active license or certification and whether it is in good standing presently or was in good standing at the time it became inactive.

(j) When necessary, all required documents shall be translated into English and such translation and original document certified as to authenticity by the issuing source. Both versions must be submitted.

(k) The application form is not acceptable if any portion of it or any other documents required to be submitted by this rule or the application itself have been executed and dated prior to one year before filing with the Board.

(l) All applications shall be sworn to and signed by the applicant and notarized. All documents submitted for qualification of licensure become the property of the State of Tennessee and will not be returned.

(2) In addition to the requirements of paragraph (1) of this rule, the following requirements must be met according to the level of licensure sought:

(a) Registered respiratory therapists:

1. The applicant shall submit proof of completion of academic and clinical preparation in a respiratory care program approved by C.A.A.H.E.P. in collaboration with Co.A.R.C. or their successor organizations.

2. The applicant shall have the school send directly to the Board office either a certificate of completion, diploma, or final official transcript. If arterial blood gas endorsement is desired, the applicant must have their school send directly to the Board office a final transcript which shows the applicant's training in blood gas analysis.

3. The applicant shall request verification of passage of the advanced level practitioner exam be submitted directly to the Board office from NBRC.

(b) Certified respiratory therapists:

1. The applicant shall submit proof of completion of academic and clinical preparation in a respiratory care program approved by C.A.A.H.E.P. in collaboration with Co.A.R.C. or their successor organizations.

2. The applicant shall have the school send directly to the Board office either a certificate of completion, diploma, or final official transcript. If arterial blood gas endorsement is desired, the applicant must have their school send directly to the Board office a final transcript which shows the applicant's training in blood gas analysis.

3. The applicant shall submit proof of completion of academic and clinical preparation in a respiratory care program approved by the Commission on Accreditation of Allied Health Education Programs or its successor organization or other accrediting organization recognized by the Board. "Academic and clinical preparation in a respiratory care program approved by the Commission on Accreditation of Allied Health Education Programs or its successor organization or other accrediting organization by the Board" shall mean successful completion of a respiratory care educational program as that term is defined in T.C.A. § 63-27-105 and Rule 1330-01-.01.

(Rule 1330-01-.05, continued)

The applicant shall have the school send directly to the Board office either a certificate of completion, diploma, or final official transcript. If arterial blood gas endorsement is desired, the applicant must have their school send directly to the Board office a final transcript which shows the applicant's training in blood gas analysis.

4. The applicant shall request verification of passage of the entry-level practitioner exam provided by the NBRC be submitted directly to the Board office from the NBRC.

~~(3) Respiratory care practitioners by endorsement. The Board may issue a license by endorsement to an applicant who is currently licensed to practice respiratory care under the laws of another state, territory or country if the qualifications of the applicant are deemed by the Board to be equivalent to those required in Tennessee. Endorsement applicants must:~~

~~(a) Complete the Board approved application; and~~

~~(b) Provide proof of possessing a current license, in good standing, from another state.~~

~~(c) If ABG endorsement is desired, refer to rule 1330-01-.22 on ABG endorsement.~~

~~(d) Graduates of educational programs not accredited by the American Medical Association Committee on Allied Health Education and Accreditation may be determined to have equivalent educational attainment upon submitting the following:~~

~~1. Official copy of grades and curriculum, translated into English. Such translation and original document must be certified as to authenticity by the issuing source.~~

~~2. Any education credentials obtained in such program evaluated by either a professional credentialing agency or an institution of higher education (college or university). The results of such evaluation must be submitted directly to the Board's administrative office from the evaluater on the evaluator's official letterhead and contain an original signature.~~

~~3. If the applicant is not a United States citizen:~~

~~(i) Documentation of legal entry into the United States (certified photocopy of visa, naturalization papers or passport).~~

~~(ii) Evidence of passing their English Competency Examination except for those applicants educated in countries in which English is the primary language or whose country of education is a member of the British Commonwealth. The test results must be forwarded directly to the Board office from the testing agency.~~

~~(I) One of the following examinations must have been passed:~~

~~I. Test of Spoken English~~

~~II. Test of English as a Foreign Language~~

~~III. Test of Written English or~~

~~IV. Michigan English Language Assessment Battery~~

(Rule 1330-01-.05, continued)

~~(II) To obtain information regarding English competency examinations, requests must be directed to:~~

~~Test of English~~
~~P. O. Box 6155~~
~~Princeton, NJ 08541-6155~~

~~Or~~

~~Michigan English Language Assessment Battery~~
~~English Language Institute~~
~~Testing and Certification Division~~
~~3020 North University Building~~
~~The University of Michigan~~
~~Ann Arbor, MI 48109-1057~~

(3) Respiratory care practitioners by endorsement - The Board may issue a license by endorsement to an applicant who is currently licensed to practice respiratory care under the laws of another state, territory or country if the qualifications of the applicant are deemed by the Board to be equivalent to those required in Tennessee.

Formatted: Indent: Left: 0.38", Hanging: 0.38"

(a) Endorsement applicants must:

Formatted: Indent: Left: 0.75", Hanging: 0.38"

1. Complete the Board approved application;

2. Provide proof of possessing a current license, in good standing, from another state; and

3. Provide proof of having completed at least twelve (12) hours of continuing education for the previous calendar year.

(b) If ABG endorsement is desired, refer to rule 1330-01-.22 on ABG endorsement.

Formatted: Indent: Hanging: 0.38"

(c) Graduates of educational programs not accredited by the American Medical Association Committee on Allied Health Education and Accreditation or the Commission on Accreditation for Respiratory Care may be determined to have equivalent educational attainment upon submitting the following:

Formatted: Indent: Hanging: 0.38"

1. Official copy of grades and curriculum, translated into English. Such translation and original document must be certified as to authenticity by the issuing source.

2. Any education credentials obtained in such program evaluated by either a professional credentialing agency or an institution of higher education (college or university). The results of such evaluation must be submitted directly to the Board's administrative office from the evaluator on the evaluator's official letterhead and contain an original signature.

3. If the applicant is not a United States citizen:

(i) Documentation of legal entry into the United States {certified photocopy of visa, naturalization papers or passport}.

(ii) Evidence of passing their English Competency Examination except for those applicants educated in countries in which English is the primary language or whose country of education is a member of the British

(Rule 1330-01-.05, continued)

Commonwealth. The test results must be forwarded directly to the Board office from the testing agency.

(I) One of the following examinations must have been passed:

I. Test of Spoken English

II. Test of English as a Foreign Language

III. Test of Written English or

IV. Michigan English Language Assessment Battery

(II) To obtain information regarding English competency examinations, requests must be directed to:

Test of English
P. O. Box 6155
Princeton, NJ 08541-6155

Or

Michigan English Language Assessment Battery
English Language Institute
Testing and Certification Division
3020 North University Building
The University of Michigan
Ann Arbor, MI 48109-1057

(4) Application review and licensure decisions shall be governed by rule 1330-01-.07.

Authority: *T.C.A. §§4-5-202, 4-5-204, 63-27-102, 63-27-104, 63-27-105, 63-27-106, 63-27-107, 63-27-108, 63-27-112, 63-27-113, 63-27-115, and 63-27-116.* ***Administrative History:*** *Original rule filed January 31, 2000; effective April 15, 2000. Amendment filed March 20, 2001; effective June 3, 2001. Amendment filed March 27, 2003; effective June 10, 2003. Amendment filed April 17, 2003; effective July 1, 2003. Amendment filed December 5, 2003; effective February 18, 2004. Amendment filed March 14, 2006; effective May 28, 2006.*

1330-01-.06 FEES.

(1) The fees are as follows:

(a) Total Application fee - A fee to be paid by all applicants seeking initial licensure, including those seeking licensure by reciprocity. This fee consists of the Application Fee and License Fee. In cases where an applicant is denied licensure or the application file is closed due to abandonment, only the portion representing the License Fee will be refundable.

(b) Endorsement/Verification fee - A non-refundable fee to be paid for each certification, endorsement or verification of an individual's record for any purpose.

(c) Late Renewal fee - A Division established non-refundable fee to be paid when an individual fails to timely renew a license.

(Rule 1330-01-.10, continued)

1330-01-.11 RETIREMENT AND REINSTATEMENT OF LICENSE.

(1) A person who holds a current license and does not intend to practice as a "Respiratory Care Practitioner" may apply to convert an active license to retired status. An individual who holds a retired license will not be required to pay a renewal fee to maintain his license in retired status.

(2) A person who holds an active license may apply for retired status in the following manner:

(a) Obtain, complete, and submit an Affidavit of Retirement form to the Board office; or

(b) Submit any other documentation which may be required to the Board office.

(c) The effective date of retirement will be the date the Affidavit of Retirement is received in the Board office.

(3) After January 1, 2004, applicants currently licensed as registered respiratory therapists who have not obtained the credential "Registered Respiratory Therapist (RRT)" from the NBRC shall have their licenses reinstated as certified respiratory therapists.

(4) An individual whose license has been retired may re-enter active status by doing the following:

(a) Obtain, complete, and submit a Reinstatement Application form to the Board office; and

(b) Pay the renewal fee and state regulatory fees as provided in rule 1330-01-.06.

(c) If reinstatement is requested prior to the expiration of one year from the date of retirement, the Board will require payment of the past due renewal and the late renewal fees.

(d) Provide verification of completion of continuing education requirements, as provided in rule 1330-01-.12.

(5) Reinstatement applications shall be treated as licensure applications and review decisions shall be governed by rule 1330-01-.07.

Authority: *T.C.A. §§4-5-202, 4-5-204, 63-1-107, 63-27-104, 63-27-105, 63-27-109, and 63-27-113.* ***Administrative History:*** *Original rule filed January 31, 2000; effective April 15, 2000. Amendment filed March 20, 2001; effective June 3, 2001. Amendment filed March 27, 2003; effective June 10, 2003. Amendment filed April 17, 2003; effective July 1, 2003.*

1330-01-.12 CONTINUING EDUCATION.

(1) Hours required.

~~(a) Each therapist and assistant licensed by the Board must complete ten (10) contact hours of continuing education every calendar year. All courses must be at least thirty (30) minutes in length.~~

Formatted: Normal

~~1. At least five (5) hours of the ten (10) hour requirement shall pertain to the clinical practice of respiratory care, or to education, or to research relating to the cardio-pulmonary system.~~

(Rule 1330-01-.12, continued)

~~2. Up to five (5) hours of the ten (10) hour requirement may pertain to the management of practicing respiratory care or may pertain to ethics and substance abuse.~~

(a) Each therapist and assistant licensed by the Board must complete twelve (12) hours of approved continuing education every calendar year.

Formatted: Indent: Left: 0.75", Hanging: 0.38", Tab stops: 1.13", Left

1. At least five (5) of those twelve (12) hours must pertain to the clinical practice of respiratory care or to research relating to the cardio-pulmonary system.

Formatted: Indent: Left: 1.13", Hanging: 0.38"

2. At least one (1) of those twelve (12) hours must pertain to patient safety as defined by the T.J.C.

Formatted: Indent: Left: 1.13", Hanging: 0.38"

3. At least one (1) of those twelve (12) hours must be a course focused on the professional or ethical standards required of respiratory therapists by their governing rules and statutes.

Formatted: Indent: Left: 1.13", Hanging: 0.38"

4. The remaining five (5) hours may pertain to, among other topics, education or management.

Formatted: Indent: Left: 1.13", Hanging: 0.38"

~~(b) For new licensees, submitting proof of successful completion of the respiratory care program required by T.C.A. §§ 63-27-106 or 63-27-107 shall be considered proof of sufficient preparatory education to constitute continuing education contact hour requirements for the calendar year in which the program was completed.~~

(b) For new licensees, submitting proof of successful completion of the respiratory care program required by T.C.A. §§ 63-27-106 or 63-27-107 shall be considered proof of sufficient preparatory education so as to satisfy the continuing education requirements for the calendar year in which the new licensee completed the program.

Formatted: Indent: Left: 0.75", Hanging: 0.38"

(2) Acceptable Continuing Education.

~~(a) The following organizations' or associations' and their local and state affiliates' continuing education activities, which pertain to the practice of respiratory care, shall be considered prior approved for fulfilling the contact hour requirements of this rule:~~

~~1. All hospitals or institutions belonging to the Tennessee Hospital Association, or which are J.C.A.H.O. accredited.~~

~~2. American Association for Respiratory Care and any of its chartered affiliates~~

~~3. American Association of Critical Care Nurses~~

~~4. American Association of Pediatric Physicians~~

~~5. American Cancer Society~~

~~6. American College of Chest Physicians~~

~~7. American College of Emergency Physicians~~

~~8. American College of Physicians~~

~~9. American Heart Association~~

(Rule 1330-01-.12, continued)

~~10. American Lung Association~~

~~11. American Medical Association~~

~~12. American Nurses Association~~

~~13. American Nurses Credentialing Center's Commission on Accreditation~~

~~14. American Society of Anesthesiologists~~

~~15. American Society of Cardiovascular Professionals~~

~~16. American Thoracic Society~~

~~17. Association of Certified Registered Nurse Anesthetists~~

~~18. Committee on Accreditation for Respiratory Care~~

~~19. Society of Critical Care Medicine~~

~~20. Tennessee Association for Home Care~~

~~21. Tennessee Association of Cardiovascular and Pulmonary Rehabilitation~~

~~22. Tennessee Medical Association~~

(a) The following organizations' or associations' and their local and state affiliates' continuing education activities, which pertain to the practice of respiratory care, are considered pre-approved for fulfilling the requirements of this rule:

Formatted: Indent: Left: 0.75", Hanging: 0.38"

1. All hospitals or institutions belonging to the Tennessee Hospital Association, or which are T.J.C. accredited, and other accrediting hospital bodies with Centers for Medicare and Medicaid Services deemed status;

2. American Association for Respiratory Care and any of its chartered affiliates;

3. American Association of Critical Care Nurses;

4. American Association of Pediatric Physicians;

5. American Cancer Society;

6. American College of Chest Physicians;

7. American College of Emergency Physicians;

8. American College of Physicians;

9. American Heart Association;

10. American Lung Association;

11. American Medical Association;

12. American Nurses Association;

(Rule 1330-01-.12, continued)

13. American Nurses Credentialing Center's Commission on Accreditation;

14. American Society of Anesthesiologists;

15. American Society of Cardiovascular Professionals;

16. American Thoracic Society;

17. Association of Certified Registered Nurse Anesthetists;

18. Committee on Accreditation for Respiratory Care;

19. Society of Critical Care Medicine;

20. Tennessee Association for Home Care;

21. Tennessee Association of Cardiovascular and Pulmonary Rehabilitation;

22. Tennessee Medical Association;

23. American Academy of Sleep Medicine;

24. American Association of Sleep Technologists; and

25. Society of Anesthesia & Sleep Medicine.

Formatted: Indent: Left: 0", First line: 0"

~~(b) In lieu of obtaining continuing education contact hours from one of the organizations listed in (a), a licensee may obtain his or her continuing education contact hours in any of the following ways:~~

~~1. By taking and passing (with a grade point average of 2.0 or its equivalent, or better) a college or university course which focuses on the clinical practice of respiratory care and/or on education, management or research relating to the cardiopulmonary system. The licensee will receive continuing education contact hours equal to three (3) times the number of hours for which the course is accredited by the college or university.~~

~~2. By taking and passing advanced training courses (either the initial, renewal, or instructor courses) on advanced cardiac life support (ACLS), pediatric advanced life support (PALS), or neonatal resuscitation programs (NRP). The licensee will receive ten (10) continuing education contact hours for one of these courses (unless the number of hours attended by the licensee is actually less than ten (10 hours).~~

~~3. By taking and passing a national re-credentialing examination (either of the advanced practitioner examinations for registered respiratory therapists or the certification examination for certified respiratory therapists). The licensee will receive twelve (12) continuing education contact hours for passing the examination.~~

~~4. By completing a self study course, as provided in subparagraph (2) (c).~~

(Rule 1330-01-.12, continued)

(b) In lieu of obtaining continuing education hours from one of the organizations listed in (a), a licensee may obtain his or her continuing education hours in any of the following ways:

1. By taking and passing (with a grade point average of 2.0 or its equivalent, or better) a college or university course which focuses on the clinical practice of respiratory care and/or on education, management or research relating to the cardiopulmonary system. The licensee will receive continuing education hours equal to three (3) times the number of hours for which the course is accredited by the college or university.

2. By taking and passing advanced training courses (either the initial, renewal, or instructor courses) on advanced cardiac life support (ACLS), pediatric advanced life support (PALS), or neonatal resuscitation programs (NRP). The licensee will receive ten (10) continuing education hours for one of these courses (unless the number of hours attended by the licensee is actually less than ten (10 hours).

3. By taking and passing a NBRC re-credentialing examination (either of the advanced practitioner examinations for registered respiratory therapists or the certification examination for certified respiratory therapists), or by taking and passing a NBRC specialty examination, such as, including but not limited to, Sleep Disorder Specialty or Certified Pulmonary Function Technologist. The licensee will receive ten (10) continuing education hours for passing the examination. These exams shall not fulfill the one (1) hour requirement in patient safety or the one (1) hour in ethics.

4. By presenting or instructing a pre-approved course. The credit is limited to credit for twice the presentation time and credit cannot be given for the same topic more than once per calendar year.

~~(c) Multi-Media Formats—Continuing education activities/courses may be presented in the traditional lecture and classroom formats or in multi-media formats.~~

~~1. Multi-media courses are courses utilizing:~~

~~(i) The Internet~~

~~(ii) Closed-circuit television~~

~~(iii) Satellite broadcasts~~

~~(iv) Correspondence courses~~

~~(v) Videotapes~~

~~(vi) CD-ROM~~

~~(vii) DVD~~

~~(viii) Teleconferencing~~

~~(ix) Videoconferencing~~

~~(x) Distance learning~~

~~2. A maximum of five (5) credit hours may be granted for multi-media courses during each calendar year.~~

(c) A minimum of 5 hours must be obtained live, real time, with interactive opportunity.

Formatted: Indent: Left: 0.75", Hanging: 0.38"

(Rule 1330-01-.12, continued)

(3) Continuing Education Program Approval Process

~~(a) All entities offering education activities not granted prior approval by these rules must request and receive prior approval of their content by the Board in order to be considered valid for fulfilling any of the continuing education requirements as set forth in this act.~~

(a) All entities offering education activities not considered pre-approved by these rules must request and receive prior approval of their content by the Board in order to be considered valid for fulfilling any of the continuing education requirements as set forth in this act

Formatted: Indent: Left: 0.75", Hanging: 0.38", Numbered + Level: 1 + Numbering Style: a, b, c, ... + Start at: 1 + Alignment: Left + Aligned at: 0.75" + Indent at: 1"

(b) Application for approval shall contain the topic, speaker credentials, a brief description of content or content objectives, the sponsoring institution or organization, the length in minutes of each presentation, and the number of credit hours requested. Activities/courses that are being offered in traditional classroom and lecture formats shall also include the date and the place of instruction.

~~(c) All applications must be submitted to the Board a minimum of forty-five (45) calendar days prior to the educational offering. The Board or Board Consultant shall review each application and shall rule on whether the offering(s) in whole or in part shall be accepted as valid for the purposes of the continuing education requirements of this act. The decision of the Board shall be final in all such matters.~~

(c) All applications must be submitted to the Board a minimum of thirty (30) calendar days prior to any scheduled Board meeting which is to take place before the educational offering. The Board or Board Consultant shall review each application and shall rule on whether the offering(s) in whole or in part shall be accepted as valid for the purposes of the continuing education requirements of this act. The decision of the Board shall be final in all such matters.

Formatted: Indent: Left: 0.75", Hanging: 0.38", Tab stops: 1.13", Left

(4) Documentation

(a) Each individual must retain independent proof of attendance and completion of all continuing education requirements. This documentation must be retained for a period of three (3) years from the end of the renewal period in which the continuing education was acquired. This documentation must be produced for inspection and verification, if requested in writing by the Board during its verification process. Such documentation must be one (1) or more of the following:

~~1. Certificates verifying the individual's attendance.~~

1. Certificates verifying the individual's completion.

2. Official transcript verifying credit hours earned.

Formatted: Numbered + Level: 1 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 1.13" + Indent at: 1.38"

3. Written documentation of training that is kept by the respiratory care practitioner and meets the following criteria:

(i) Written or printed on official stationery of the organization which provided the continuing education;

(ii) The licensee's name;

(Rule 1330-01-.12, continued)

(iii) The total number of continuing education hours;

(iv) The course title;

(v) The date of the continuing education; and

(vi) The licensee's signature and license number.

~~4. Certificates or letters verifying successful completion of a multi-media course.~~

(b) If, after request by the Board during its verification process, a person submits documentation for training that is not clearly identifiable as appropriate continuing education, the Board will request a written description of the training and how it applies to the practice of respiratory care. If the Board determines that the training cannot be considered appropriate continuing education, the individual will be given ninety (90) days to replace the hours not allowed. Those hours will be considered replacement hours and cannot be counted during the next renewal period.

(5) Continuing education credit will not be allowed for the following:

(a) Regular work activities, administrative staff meetings, case staffing/reporting, etc.

(b) Membership in, holding office in, or participation on boards or committees, business meetings of professional organizations, or banquet speeches.

~~(c) Independent unstructured or self-structured learning such as home study programs, except as authorized pursuant to subparagraph (2) (c).~~

(c) Independent unstructured or self-structured learning.

(d) Training specifically related to policies and procedures of an agency (Examples - universal precautions, infection control, emergency or disaster preparedness, employee orientation, employee relations).

(e) College or university course(s), except as authorized pursuant to subparagraph (2)(b).

(f) Provider CPR courses of any type.

(6) Continuing Education for Reinstatement of Retired, Revoked, or Expired License.

(a) Reinstatement of Retired License

1. An individual whose license has been retired for one (1) year or less will be required to fulfill continuing education requirements as outlined in this rule as a prerequisite to reinstatement. Those hours can not be counted toward future continuing education requirements.

~~2. Any individual requesting reinstatement of a license which has been retired for more than one (1) year must submit, along with the reinstatement request, verification which indicates the attendance and completion of ten (10) contact hours of continuing education for every calendar year for which the license has been retired, although under no circumstances shall the maximum number of contact hours required be more than twenty (20) hours. The continuing education hours must have been obtained during the period of retirement with the exception of the most recent calendar year requirement, which must have been completed within the twelve (12) months preceding reinstatement.~~

2. Any individual requesting reinstatement of a license which has been retired for more than one (1) year must submit, along with the reinstatement request, verification which indicates the attendance and completion of twelve (12) hours of continuing education for every calendar year for which the license has been retired, although under no circumstances shall the maximum number of hours required be more than twenty-four (24) hours. The continuing education hours must have been obtained during the period of retirement with the exception of the most recent calendar year requirement, which must have been completed within the twelve (12) months preceding reinstatement.

Formatted: Indent: Left: 1.13", Hanging: 0.37", Numbered + Level: 1 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 1.13" + Indent at: 1.38"

3. The twelve (12) hours received for each calendar year must comply with the requirements of rule 1330-01-.12(1)(a).

Formatted: Indent: Left: 1.13", Hanging: 0.37", Numbered + Level: 1 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 1.13" + Indent at: 1.38"

~~(b) Reinstatement of Revoked License - Any individual requesting reinstatement of a license which has been revoked for non-compliance with the continuing education requirements of this rule must submit, along with the reinstatement request, verification which indicates the attendance and completion of ten (10) contact hours of continuing education for every calendar year for which the license has been revoked. The continuing education hours must have been obtained during the period of revocation with the exception of the most recent calendar year requirement, which must have been completed within the twelve (12) months preceding reinstatement.~~

(b) Reinstatement of Revoked License - Any individual requesting reinstatement of a license which has been revoked for non-compliance with the continuing education requirements of this rule must submit, along with the reinstatement request, verification which indicates the attendance and completion of twelve (12) hours of continuing education for every calendar year for which the license has been revoked. The continuing education hours must have been obtained during the period of revocation with the exception of the most recent calendar year requirement, which must have been completed within the twelve (12) months preceding reinstatement.

Formatted: Indent: Left: 0.75", Hanging: 0.38", Numbered + Level: 1 + Numbering Style: a, b, c, ... + Start at: 1 + Alignment: Left + Aligned at: 0.75" + Indent at: 1"

(c) Reinstatement of Expired License – No person whose license has expired may be reinstated without submitting evidence of fulfillment of the continuing education requirements as outlined in this rule.

~~1. Except for licensees who have been practicing in another state during the period of expiration, the continuing education hours documented at the time of reinstatement must equal ten (10) contact hours for every calendar year for which the license was expired, although under no circumstances shall the maximum number of contact hours required be more than sixty (60) hours, and must have been successfully completed before the date of reinstatement.~~

1. Except for licensees who have been practicing in another state during the period of expiration, the continuing education hours documented at the time of reinstatement must equal twelve (12) hours for every calendar year for which the license was expired, although under no circumstances shall the maximum number of hours required be more than sixty (60) hours, and must have been successfully completed before the date of reinstatement.

Formatted: Indent: Left: 1.13", Hanging: 0.37", Numbered + Level: 1 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 1.13" + Indent at: 1.38"

~~2. For licensees who have been practicing in another state during the period of expiration, the continuing education hours documented at the time of reinstatement must equal ten (10) contact hours for every calendar year for which the license was expired, although under no circumstances shall the maximum number of contact hours required be more than forty (40) hours, and must have been begun and successfully completed before the date of reinstatement.~~

2. For licensees who have been practicing in another state during the period of expiration, the continuing education hours documented at the time of reinstatement must equal twelve (12) hours for every calendar year for which the license was expired, although under no circumstances shall the maximum number of hours required be more than forty-eight (48) hours, and must have been begun and successfully completed before the date of reinstatement.

Formatted: Indent: Left: 1.13", Hanging: 0.37", Numbered + Level: 1 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 1.13" + Indent at: 1.38"

3. The twelve (12) hours received for each calendar year must comply with the requirements of rule 1330-01-.12(1)(a).

Formatted: Indent: Left: 1.13", Hanging: 0.37", Numbered + Level: 1 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 1.13" + Indent at: 1.38"

(d) Continuing education hours obtained as a prerequisite for reinstating a license may not be counted toward the calendar year requirement.

(7) Violations - Any licensee who fails to successfully complete or who falsely certifies attendance and completion of the required hours of continuing education may be subject to disciplinary action.

(a) Prior to the institution of any disciplinary proceedings, a letter shall be issued to the last known address of the individual stating the facts or conduct which warrant the intended action.

(b) The licensee has thirty (30) days from the date of notification to show compliance with all lawful requirements for the retention of the license.

(c) Any licensee who fails to show compliance with the required continuing education hours in response to the notice contemplated by subparagraphs (7) (a) and (7) (b) above may be subject to disciplinary action.

(d) Continuing education hours obtained as a result of compliance with the terms of a Board Order in any disciplinary action shall not be credited toward the continuing education hours required to be obtained in any renewal period.

(8) Waiver or Extension of Continuing Education

(a) The Board may grant a waiver of the need to attend and complete the required hours of continuing education or the Board may grant an extension of the deadline to complete the required hours of continuing education if it can be shown that compliance was beyond the physical or mental capabilities of the person seeking the waiver.

(b) Waivers or extension of the deadline will be considered only on an individual basis and may be requested by submitting the following items to the Board office:

1. A written request for a waiver or deadline extension which specifies which requirements are sought to be waived or which deadline is sought to be extended and a written and signed explanation of the reason for the request; and

2. Any documentation which supports the reason(s) for the waiver or deadline extension requested or which is subsequently requested by the Board.

(c) A waiver or deadline extension approved by the Board is effective only for the renewal period for which the waiver is sought.

Authority: *T.C.A. §§4-5-202, 4-5-204, 63-1-107, 63-27-104, 63-27-105, 63-27-106, 63-27-107, 63-27-109, 63-27-112, and 63-27-116.* ***Administrative History:*** *Original rule filed January 31, 2000; effective*

(Rule 1330-01-.12, continued)
April 15, 2000. Amendment filed March 20, 2001; effective June 3, 2001. Amendment filed March 27, 2003; effective June 10, 2003. Amendments filed March 17, 2005; effective May 31, 2005. Amendment filed February 22, 2010; effective May 23, 2010.

1330-01-.13 RESERVED.

Authority: *T.C.A. §§4-5-202, 4-5-204, and 63-27-104.* ***Administrative History:*** *Original rule filed January 31, 2000; effective April 15, 2000. Amendment filed March 27, 2003; effective June 10, 2003.*

1330-01-.14 TEMPORARY LICENSE.

(1) ~~(a) Filed with the Board office all the documentation required by rule 1330-01-.05, except proof of examination passage. A temporary license can be issued not to exceed a cumulative period of twelve (12) months.~~

(a) A temporary license is available for applicants who have filed their application with the Board office, and whose application file includes all the documentation required by rule 1330-01-.05, except for proof of their examination passage, and who are otherwise qualified for licensure. A temporary license can be issued not to exceed a cumulative period of six (6) months.

Formatted: Indent: Left: 0.75", Hanging: 0.38", Numbered + Level: 1 + Numbering Style: a, b, c, ... + Start at: 1 + Alignment: Left + Aligned at: 0.75" + Indent at: 1"

Formatted: Normal

1. An applicant for temporary license as a registered respiratory therapist shall submit proof of successful completion of a program accredited by the American Medical Association Committee on Allied Health Education and Accreditation (CAHEA) in collaboration with the Joint Review Committee for Respiratory Therapy Education (JRCRTE) or their successor organizations

2. An applicant for temporary license as a certified respiratory therapist shall submit proof of successful completion of academic and clinical preparation in a respiratory care program approved by the Commission on Accreditation of Allied Health Education Programs or its successor organization or other accrediting organization recognized by the Board pursuant to Rule 1330-01-.05(2)(b)1.

"Academic and clinical preparation in a respiratory care program approved by the Commission on Accreditation of Allied Health Education Programs or its successor organization or other accrediting organization recognized by the Board" means successful completion of a program accredited by the American Medical Association Committee on Allied Health Education and Accreditation (CAHEA) in collaboration with the Joint Review Committee for Respiratory Therapy Education (JRCRTE) or their successor organizations.

(b) Applications for temporary licenses may be used for purposes of applying for full licensure. Those applications shall be held open for a period of one (1) year from the date of issuance while awaiting notification of the results of the NBRC examination. If notification of successful completion of the examination is not received in the Board office directly from the NBRC before the expiration of that year, the application will be considered abandoned pursuant to 1330-01-.07.

(2) A temporary license will always become invalid at the time a permanent license is issued.

Authority: *T.C.A. §§4-5-202, 4-5-204, 63-27-104, and 63-27-116.* ***Administrative History:*** *Original rule filed January 31, 2000; effective April 15, 2000. Amendment filed March 20, 2001; effective June 3, 2001. Amendment filed March 27, 2003; effective June 10, 2003. Amendment filed April 17, 2003; effective July 1, 2003.*

October, 2012 (Revised)

(Rule 1330-01-.17, continued)

(2) Change of Address - Each person holding a license who has had a change of address or place of employment, shall file in writing with the Board his current address, giving both old and new addresses. Such requests shall be received in the Board office no later than thirty (30) days after such change is effective and must reference the individual's name, profession, board, social security and license numbers.

Authority: *T.C.A. §§4-5-202, 4-5-204, 63-1-108, 63-27-104, 63-27-105, and 63-27-106.* ***Administrative History:*** *Original rule filed January 31, 2000; effective April 15, 2000. Amendment filed March 27, 2003; effective June 10, 2003.*

1330-01-.18 MANDATORY RELEASE OF PATIENT RECORDS. - Patient records release shall be governed by Tennessee Code Annotated, Title 63, Chapter 2.

Authority: *T.C.A. §§4-5-202, 4-5-204, 63-27-104, 63-2-101, and 63-2-102.* ***Administrative History:*** *Original rule filed January 31, 2000; effective April 15, 2000.*

1330-01-.19 BOARD OFFICERS, CONSULTANTS, RECORDS, DECLARATORY ORDERS, ADVISORY RULINGS, SUBPOENAS, AND SCREENING PANELS.

(1) The Board, shall elect annually from its members the following officers:

(a) Chairman - who shall preside at all Board meetings, and appoint committees.

(b) Secretary - who in the absence of the chairperson shall preside at Board meetings and who, along with the Board's Unit Director, shall be responsible for correspondence from the Board and execution of all official documents requiring the seal of the Board to be affixed.

(2) The Board shall select consultants who, along with each individual member of the Board, may serve as consultants to the Division and who are vested with the authority to do the following acts:

(a) Review complaints and recommend whether and what type disciplinary actions should be instituted as the result of complaints received or investigations conducted by the Division.

(b) Recommend whether and what terms a complaint, case or disciplinary action might be settled. Any matter proposed for settlement must be subsequently reviewed, evaluated and ratified by the full Board before it becomes effective.

(c) Review and approve all types of applications for issuance of a temporary authorization pursuant T.C.A. § 63-27-116 (d), subject to subsequent ratification by the Board before full licensure, renewal or reinstatement can issue.

(d) Undertake any other matter authorized by a majority vote of the Board.

(3) Records and Complaints

(a) All requests, applications, notices, other communications and correspondence shall be directed to the Board office. Any requests or inquiries requiring a Board decision or official Board action, except documents relating to disciplinary actions or hearing requests, must be received fourteen (14) days prior to a scheduled Board meeting. Requests or inquiries not timely received will be retained in the Board office and presented at the next Board meeting.

(Rule 1330-01-.19, continued)

(b) All records of the Board, except those made confidential by law, are open for inspection and examination, under the supervision of an employee of the Division at the Board office during normal business hours.

(c) Copies of public records shall be provided to any person upon payment of a fee.

(d) All complaints should be directed to the Division's Investigations Section.

(4) Declaratory Orders - The Board adopts, as if fully set out herein, rule 1200-10-01-.11, of the Division of Health Related Boards and as it may from time to time be amended, as its rule governing the declaratory order process. All declaratory order petitions involving statutes, rules or orders within the jurisdiction of the Board shall be addressed by the Board pursuant to that rule and not by the Division. Declaratory Order Petition forms can be obtained from the Board's administrative office.

(5) Advisory Rulings - Any person who is affected by any matter within the jurisdiction of the Board and who holds a license issued pursuant to Chapter 27 of Title 63 of the Tennessee Code Annotated, may submit a written request for an advisory ruling subject to the limitations imposed by T.C.A. § 63-27-104 (b). The procedures for obtaining and issuance of advisory rulings are as follows:

(a) The licensee shall submit the request to the Board Administrative Office on the form contained in subparagraph (5)(e) providing all the necessary information; and

(b) The request, upon receipt, shall be referred to the Board's administrative staff for research, review and submission of a proposed ruling to the Board for its consideration at the next meeting after the draft ruling has been approved by the Board's consultant and advisory attorney; and

(c) The Board shall review the proposed ruling and either make whatever revisions or substitutions it deems necessary for issuance or refer it back to the administrative staff for further research and drafting recommended by the Board; and

(d) Upon adoption by the Board the ruling shall be transmitted to the requesting licensee. The ruling shall have only such affect as is set forth in T.C.A. § 63-27-104 (b).

~~(e) Any request for an advisory ruling shall be made on the following form, a copy of which may be obtained from the Board's Administrative Office:~~

~~Board of Respiratory Care~~
~~Request for Advisory Ruling~~

~~Date:~~
~~Licensee's Name:~~
~~Licensee's Address:~~

~~License Number:~~

~~1. The specific question or issue for which the ruling is requested:~~

~~2. The facts that gave rise to the specific question or issue:~~

(Rule 1330-01-.19, continued)

3. ~~The specific statutes and/or rules which are applicable to the question or issue:~~

~~Licensee's Signature~~

~~Mail or Deliver to: Unit Director~~
~~Tennessee Board of Respiratory Care~~
~~665 Mainstream Drive~~
~~Nashville, TN 37243~~

(e) Any request for an advisory ruling shall be made on the following form, a copy of which may be obtained from the Board's Administrative Office:

Formatted: Indent: Hanging: 0.38"

Board of Respiratory Care
Request for Advisory Ruling

Date:
Licensee's Name:
Licensee's Address:

License Number:

1. The specific question or issue for which the ruling is requested:

2. The facts that gave rise to the specific question or issue:

3. The specific statutes and/or rules which are applicable to the question or issue:

Licensee's Signature

(6) Subpoenas

(a) Purpose - Although this rule applies to persons and entities other than respiratory care practitioners, it is the Board's intent as to respiratory care practitioners that they be free to comprehensively treat and document treatment of their patients without fear that the treatment or its documentation will be unduly subjected to scrutiny outside the

(Rule 1330-01-.19, continued)

profession. Consequently, balancing that intent against the interest of the public and patients to be protected against substandard care and activities requires that persons seeking to subpoena such information and/or materials must comply with the substance and procedures of these rules.

It is the intent of the Board that the subpoena power outlined herein shall be strictly construed. Such power shall not be used by the Division or Board investigators to seek other incriminating evidence against respiratory care practitioners when the Division or Board does not have a complaint or basis to pursue such an investigation. Thus, unless the Division or its investigators have previously considered, discovered, or otherwise received a complaint from either the public or a governmental entity, no subpoena as contemplated herein shall issue.

(b) Definitions - As used in this chapter of rules the following words shall have the meanings ascribed to them:

1. Probable Cause

(i) For Investigative Subpoenas - Shall mean that probable cause, as defined by case law at the time of request for subpoena issuance is made, exists that a violation of the Respiratory Care Practitioner Act or rules promulgated pursuant thereto has occurred or is occurring and that it is more probable than not that the person(s), or item(s) to be subpoenaed possess or contain evidence which is more probable than not relevant to the conduct constituting the violation.

(ii) The utilization of the probable cause evidentiary burden in proceedings pursuant to this rule shall not in any way, nor should it be construed in any way to establish a more restrictive burden of proof than the existing preponderance of the evidence in any civil disciplinary action which may involve the person(s) or items that are the subject of the subpoena.

2. Presiding Officer - For investigative subpoenas shall mean the Board chair.

(c) Procedures

1. Investigative Subpoenas

(i) Investigative Subpoenas are available only for issuance to the authorized representatives of the Tennessee Department of Health, its investigators and its legal staff.

(ii) An applicant for such a subpoena must either orally or in writing notify the Board's Unit Director of the intention to seek issuance of a subpoena. That notification must include the following:

(I) The time frame in which issuance is required so the matter can be timely scheduled; and

(II) A particular description of the material or documents sought, which must relate directly to an ongoing investigation or contested case, and shall, in the instance of documentary materials, be limited to the records of the patient or patients whose complaint, complaints, or records are being considered by the Division or Board, although in no event shall such subpoena be broadly drafted to provide investigative access to medical records of other patients who are not referenced in

(Rule 1330-01-.19, continued)

a complaint received from an individual or governmental entity, or who have not otherwise sought relief, review, or Board consideration of a respiratory care practitioner's conduct, act, or omission; and

(III) Whether the proceedings for the issuance is to be conducted by physical appearance or electronic means; and

(IV) The name and address of the person for whom the subpoena is being sought or who has possession of the item(s) being subpoenaed.

(iii) The Board's Unit Director shall cause to have the following done:

(I) In as timely a manner as possible arrange for the Board chair to preside and determine if the subpoena should be issued; and

(II) Establish a date, time and place for the proceedings to be conducted and notify the applicant and the court reporter; and

(III) Maintain a complete record of the proceedings including an audio tape in such a manner as to:

I. Preserve a verbatim record of the proceeding; and

II. Prevent the presiding officer from being allowed to participate in any manner in any disciplinary action of any kind, formal or informal, which may result which involves either the person or the documents or records for which the subpoena was issued.

(iv) The Proceedings

(I) The applicant shall do the following:

I. Provide for the attendance of all persons whose testimony is to be relied upon to establish probable cause; and

II. Produce and make part of the record copies of all documents to be utilized to establish probable cause; and

III. Obtain, complete and provide to the presiding officer a subpoena which specifies the following:

A. The name and address of the person for whom the subpoena is being sought or who has possession of the item(s) being subpoenaed; and

B. The location of the materials, documents or reports for which production pursuant to the subpoena is sought, if that location is known; and

C. A brief, particular description of any materials, documents or items to be produced pursuant to the subpoena; and

D. The date, time and place for compliance with the subpoena.

(Rule 1330-01-.19, continued)

IV. Provide the presiding officer testimony and/or documentary evidence which in good faith the applicant believes is sufficient to establish that probable cause exists for issuance of the subpoena as well as sufficient proof that all other reasonably available alternative means of securing the materials, documents or items have been unsuccessful.

(II) The presiding officer shall do the following:

I. Commence the proceedings and swear all necessary witnesses; and

II. Hear and maintain the confidentiality of the evidence, if any, presented at the proceedings; and

III. Control the manner and extent of inquiry during the proceedings and be allowed to question any witness who testifies; and

IV. Determine, based solely on the evidence presented in the proceedings, whether probable cause exists and, if so, issue the subpoena for the person(s) or items specifically found to be relevant to the inquiry; and

V. Sign the subpoena as ordered to be issued; and

VI. Not participate in any way in any other proceeding whether formal or informal which involves the matters, items or person(s) which are the subject of the subpoena. This does not preclude the presiding officer from presiding at further proceedings for issuance of subpoenas in the matter.

2. Post-Notice of Charges Subpoenas - If the subpoena is sought for a contested case being heard with an Administrative Law Judge from the Secretary of State's office presiding, the procedure in part 1330-01-.19(6)(c)1. shall not apply and all such post-notice of charges subpoenas should be obtained from the office of the Administrative Procedures Division of the Office of the Secretary of State pursuant to the Uniform Administrative Procedures Act and rules promulgated pursuant thereto.

(d) Subpoena Forms

1. All subpoena shall be issued on forms approved by the Board chair.

2. The subpoena forms may be obtained by contacting the Board's Administrative Office.

(e) Subpoena Service - Any method of service of subpoenas authorized by the Tennessee Rules of Civil Procedure or the rules of the Tennessee Department of State, Administrative Procedures Division may be utilized to serve subpoenas pursuant to this rule.

(7) Screening Panels - The Board adopts, as if fully set out herein, rule 1200-10-01-.13, of the Division of Health Related Boards and as it may from time to time be amended, as its rule governing the screening panel process.

(Rule 1330-01-.19, continued)

(8) Reconsiderations and Stays - The Board authorizes the member who chaired the Board for a contested case to be the agency member to make the decisions authorized pursuant to rule 1360-04-01-.18 regarding petitions for reconsiderations and stays in that case.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 63-1-115, 63-1-132, 63-1-142, 63-27-103, 63-27-104, and 63-27-112.* ***Administrative History:*** *Original rule filed January 31, 2000; effective April 15, 2000. Amendment filed March 20, 2001; effective June 3, 2001. Amendment filed June 16, 2006; effective August 30, 2006. Amendment filed March 16, 2007; effective May 30, 2007. Amendment filed February 22, 2010; effective May 23, 2010.*

1330-01-.20 ADVERTISING. The following acts or omissions in the context of advertisements by any licensee shall subject the licensee to disciplinary action pursuant to T.C.A. § 63-27-112.

(1) Claims that convey the message that one licensee is better than another when superiority cannot be substantiated.

(2) Misleading use of an unearned or non-health degree.

(3) Misrepresentation of a licensee's credentials, training, experience, or ability.

(4) Promotion of professional services which the licensee knows or should know is beyond the licensee's ability to perform.

(5) Use of any personal testimonial attesting to a quality of competency offered by a licensee that is not reasonably verifiable.

(6) Utilization of any statistical data or other information based on past performances for prediction of future services, which creates an unjustified expectation about results that the licensee can achieve.

(7) Communication of personal identifiable facts, data, or information about a patient without first obtaining the patient's consent.

Authority: *T.C.A. §§4-5-202, 4-5-204, 63-1-145, 63-1-146, 63-27-104, and 63-27-112.* ***Administrative History:*** *Original rule filed January 31, 2000; effective April 15, 2000. Amendment filed March 27, 2003; effective June 10, 2003. Amendment filed June 16, 2006; effective August 30, 2006.*

1330-01-.21 UPGRADING CLASSIFICATION REQUIREMENTS.

(1) A respiratory assistant may upgrade to certified respiratory therapist by doing the following:

(a) Complete and submit a notarized application, attach a "passport" style photograph taken within the preceding twelve (12) months, and pay the Upgrade and State Regulatory fees as provided in rule 1330-01-.06.

(b) Submit proof of completion of academic and clinical preparation in a respiratory care program approved by C.A.A.H.E.P. in collaboration with Co.A.R.C. or their successor organizations. The applicant shall have the school send directly to the Board office either a certificate of completion, diploma, or final official transcript. If arterial blood gas endorsement is desired, the applicant must have their school send directly to the Board office a final transcript which shows the applicant's training in blood gas analysis; and

(c) Have the NBRC submit to the Board office proof of successful completion of the entry level practitioner examination provided by the NBRC and/or proof of NBRC certification.

* 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)
Troy Hamm	X				
Anna Ambrose	X				
Lisa Caldwell	X				
Jeffery McCartney, MD	X				
Winston Granville	X				
John Schario				X	
Delmar Mack	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Board for Respiratory Care (board/commission/ other authority) on 08/28/2014 (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: 05/19/14 (mm/dd/yy)

Rulemaking Hearing(s) Conducted on: (add more dates). 08/28/14 (mm/dd/yy)

Date: 7/17/15

Signature: Mary Katherine Bratton

Name of Officer: Mary Katherine Bratton

Title of Officer: Assistant General Counsel

Subscribed and sworn to before me on: 7-17-15

Notary Public Signature: Suzanne Mechkowski

My commission expires on: MY COMMISSION EXPIRES APRIL 19, 2017

SUZANNE MECHKOWSKI NOTARY PUBLIC STATE OF TENNESSEE SUMNER COUNTY

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.

RECEIVED
2015 AUG 28 PM 3:40
SECRETARY OF STATE
PUBLICATIONS

Herbert H. Slatery III
Attorney General and Reporter

8/25/2015
Date

Department of State Use Only

Filed with the Department of State on: 08/28/15

Effective on: 11/26/15

Tre Hargett
Secretary of State

G.O.C. STAFF RULE ABSTRACT

AGENCY**:**	Tennessee Student Assistance Corporation
DIVISION:	Higher Education
SUBJECT:	Tennessee Promise Scholarship Program
STATUTORY AUTHORITY:	Tennessee Code Annotated, Sections 49-4-204 and 49-4-708(c)(11)
EFFECTIVE DATES:	August 4, 2015 through January 31, 2016
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	The emergency rule revises the rules concerning the Tennessee Promise Scholarship Program to make various technical clarifications and to conform the rules to the requirements of Public Chapter 186 of the Public Acts of 2015. The emergency rule allows students to enroll in less than full-time attendance in the semester of graduation if less than full-time attendance is required to complete the program, allows leaves of absence for military service and fulltime enrollment while waiting for acceptance into an eligible program of study, allows partnering organizations to service students residing in counties outside their service area if attending high school in their service area, and specifies that institutions must apply tuition waivers and discounts before the use of gift aid.

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)

The rules for the Tennessee Promise Scholarship Program Chapter 1640-01-26, as proposed, have no projected impact on local governments.

Department of State
Division of Publications
312 Rosa L. Parks, 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: 08-04-15
Rule ID(s): 5997
File Date (effective date): 8/4/15
End Effective Date: 1/31/16

Emergency Rule Filing Form

Emergency rules are effective from date of filing for a period of up to 180 days.

Agency/Board/Commission:	Tennessee Student Assistance Corporation
Division:	Higher Education
Contact Person:	Peter Abernathy
Address:	Suite 1510, Parkway Towers, 404 James Robertson Parkway, Nashville, TN
Zip:	37243
Phone:	615.532.6065
Email:	Peter.Abernathy@tn.gov

Rule Type:
X Emergency Rule

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

Statement of Necessity:

Pursuant to T.C.A. 4-5-208(a)(5), TSAC seeks approval of emergency rules for the Tennessee Promise Scholarship program pursuant to revisions made to the program enacted by 2015 Tenn. Pub. Acts Ch. 186.

The TN Promise Scholarship Program provides an opportunity for all graduating high school seniors, regardless of socioeconomic status or academic performance, to obtain a certificate, diploma, or associate's degree, free of tuition and fees, by providing students with a last-dollar scholarship, bridging the funding gap for a student after all other financial aid is applied; provides individual guidance to each participant through a statewide network of volunteer mentors; and engages the student by requiring the student to perform a minimum of eight hours of community service for each semester the scholarship is received.

These revisions reflect various sections in 2015 Public Chapter 186. Specifically, they allow leaves of absence greater than six months for students mobilized for National Guard or Reserve duty and for students attending an eligible postsecondary institution while waiting for admission into an eligible program of study (e.g. nursing). They also provide clarification for FAFSA verification and full-time enrollment. Each of these changes is needed to accommodate circumstances that may arise as early as the fall semester of the 2015 academic year.

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)

1640-01-26	Tennessee Promise Scholarship Program
Rule Number	**Rule Title**
1640-01-26-.01	Definitions
1640-01-26-.02	Scholarship Award Amounts and Classifications
1640-01-26-.03	Application Process
1640-01-26-.04	Eligibility – Tennessee Promise Scholarship Program
1640-01-26-.05	Eligibility - Early High School Graduation
1640-01-26-.06	Personal or Medical Leave of Absence
1640-01-26-.07	Community Service Program Requirements
1640-01-26-.09	Partnering Organization Requirements

RULES
OF
TENNESSEE STUDENT ASSISTANCE CORPORATION

CHAPTER 1640-01-26
TENNESSEE PROMISE SCHOLARSHIP PROGRAM

TABLE OF CONTENTS

1640-01-26-.01	Definitions
1640-01-26-.02	Scholarship Award Amounts and Classifications
1640-01-26-.03	Application Process
1640-01-26-.04	Eligibility – Tennessee Promise Scholarship Program
1640-01-26-.05	Eligibility – Early High School Graduation
1640-01-26-.06	Personal or Medical Leave of Absence
1640-01-26-.07	Community Service Program Requirements
1640-01-26-.08	Selection of Partnering Organizations
1640-01-26-.09	Partnering Organization Requirements
1640-01-26-10	Partnering Organizations – Service in Counties
1640-01-26-.11	Terminating Events
1640-01-26-.12	Tennessee Promise Scholarship Reforms
1640-01-26-.13	Certification of Eligibility
1640-01-26-.14	Evaluation of the Tennessee Promise Scholarship
1640-01-26-.15	Award Made in Error
1640-01-26-.16	Refund Policy
1640-01-26-.17	Transfer Students
1640-01-26-.18	Appeal and Exception Process

1640-01-26-.01 DEFINITIONS.

(1) Academic Requirement: A requirement of a specified grade point average or satisfactory academic progress that determines the continuing eligibility for postsecondary financial assistance from the Tennessee Promise Scholarship.

(2) Academic Year: Three (3) consecutive semesters beginning with a fall semester and including the immediately following spring and summer semesters.

(~~3~~2) Board of Directors: The board of directors of the Tennessee Student Assistance Corporation.

(~~4~~3) Board of Regents: The board of regents of the state university and community college system of Tennessee.

(~~5~~4) Certificate or Diploma: A credential, other than a degree, the receipt of which indicates satisfactory completion of training in a program of study offered by an eligible postsecondary institution.

(~~6~~5) Continuous Enrollment: The term is defined in T.C.A. 49-4-708.

(~~7~~6) Cumulative Grade Point Average: The grade point average as calculated by the eligible postsecondary institution.

(~~8~~7) Degree: A two-year associate degree conferred on students by an eligible postsecondary institution.

(~~9~~8) Eligible High School: The term is defined in T.C.A. § 49-4-902.

(10~~9~~) Eligible Postsecondary Institution: The term is defined in T.C.A. § 49-4-708.

(11) Eligible Postsecondary Program: The term is defined in T.C.A. § 49-4-708.

(12~~0~~) Entering Freshman: A student who enrolls in an eligible postsecondary institution as a participant in the Tennessee Promise Scholarship program in the fall term immediately following high school graduation, completion of a home school program, or attainment of a GED or HiSET diploma. Exceptions to this enrollment requirement may be made for students

enrolled in a TCAT, for students enrolled in a four-year postsecondary institution but not immediately admitted into an eligible postsecondary program, or for personal or medical leaves of absence as outlined in these rules.

(13) FAFSA: The term is defined in T.C.A. § 49-4-902.

(14) Full-Time Student: The term is defined in T.C.A. § 49-4-708.

(15) GED: The term is defined in T.C.A. § 49-4-902.

(16) Gift Aid: The term is defined in T.C.A. § 49-4-708.

(17) HiSET: The term is defined in T.C.A. § 49-4-902.~~The High School Equivalency Test credential awarded by a state-approved institution or organization.~~

(18) Home School Student: The term is defined in T.C.A. § 49-4-708.

(19) Immediate Family Member: Spouse, parents, children, or siblings.

(20) Mentor: An individual who is assigned by a Partnering Organization to assist Tennessee Promise Scholarship program participants in the college application and financial aid process. Mentors may serve in a volunteer or employed capacity at the discretion of the Partnering Organization. Volunteer mentors shall be at least twenty-one (21) years of age.

(21) Parent: The parent or legal guardian of a student.

(22) Partnering Organization: A not-for-profit organization selected by TSAC to administer the Tennessee Promise Scholarship program.

(23) Resident: A resident of Tennessee, as defined by regulations promulgated by the Tennessee Board of Regents~~A student meeting the definition of "in-state" in Tenn. Comp. R. & Regs. 0240-02-02-.03~~.

(24) Satisfactory Academic Progress: Progress in a course of study in accordance with the standards and practices used for Title IV programs by the TCAT at which the student is currently enrolled.

(25) Semester: The term is defined in T.C.A. § 49-4-902.

(26) Semester Hour: The credit hour used by a postsecondary institution, if the institution is on a semester system, or its equivalent, if the institution is on a system other than a semester system. "Semester hour" includes each semester hour attempted, whether remedial or for credit toward a degree, but shall not include any semester hour attempted before graduating from high school or earning a GED® or HiSET.

(27) TCAT: Tennessee College of Applied Technology.

(28) Tennessee Promise Scholarship: A last-dollar scholarship to be applied to a participating student's tuition and mandatory fees after other gift aid for which a student is eligible is applied first to tuition and mandatory fees.

(29) Tennessee Promise Scholarship Program ~~("Program")~~: A scholarship program which provides last-dollar financial aid, mentoring, and community service opportunities for Tennessee students upon graduation from high school or home school, or attainment of a GED or HiSET.

(Rule 1640-01-26-.02, continued)

(30) Tennessee Promise Scholarship Student: The term is defined in T.C.A. § 49-4-708.

(~~28~~31) Terminating Event: The occurrence of an event described in T.C.A. § 49-4-708(c)(8).

(~~29~~32) Title IV: The term is defined in T.C.A. § 49-4-902.

(~~30~~33) TSAC: Tennessee Student Assistance Corporation.

(~~31~~34) Tuition and Mandatory Fees: Tuition and mandatory fees required for the enrollment or attendance of a student at an eligible postsecondary institution that are charged to all students, and shall not include fees charged for the Regents Online Degree Program, online courses, specific programs of study, books, or supplies even if such fees are considered necessary for enrollment.

Authority: *T.C.A. §§ 49-4-201, 49-4-204, 49-4-708, and 49-4-902.* ***Administrative History:*** *Emergency rule filed August 14, 2014; effective through February 10, 2015. Original rule filed August 14, 2014; effective November 12, 2014. Amendments filed December 19, 2014; effective March 19, 2015.*

1640-01-26-.02 SCHOLARSHIP AWARD AMOUNTS AND CLASSIFICATIONS.

(1) The Tennessee Promise Scholarship program is intended to provide financial assistance to offset tuition and mandatory fees associated with pursuing postsecondary education after other gift aid has been credited to tuition and mandatory fees.

(2) Award amounts for the program shall be determined in accordance with T.C.A. § 49-4-708 and shall be set in the General Appropriations Act.

(3) In the event that funds are insufficient to fully fund the Tennessee Promise Scholarship award program, TSAC may reduce the award amount in accordance with these rules.

(4) Recipients of a Tennessee Promise Scholarship award as provided by these rules must be enrolled and attending full-time in an eligible postsecondary institution. A student may enroll less than full time in the semester of graduation if full-time enrollment is not required to complete the program of study, and for semesters in which the student receives an approved leave of absence.

(5) Except for approved medical or personal leaves of absence, award recipients must be continuously enrolled and maintain the required grade point average or satisfactory academic progress at an eligible postsecondary institution as provided in Tenn. Comp. R. & Regs. 1640-01-26-.04~~(1)(e)~~.

(6) All tuition waivers and discounts for which a student or parent qualifies shall first be deducted from the student's tuition and mandatory fees before gift aid is credited.

(7) Gift aid from sources other than the Tennessee Promise Scholarship shall be credited first to tuition and mandatory fees to reduce the student's Tennessee Promise Scholarship award. If other gift aid exceeds tuition and mandatory fees then the student shall not be eligible for the Tennessee Promise Scholarship award, but shall remain eligible for all other services available through the Tennessee Promise Scholarship program, provided the student maintains all academic and non-academic requirements.

(8) The receipt of a Tennessee Promise Scholarship is contingent upon admission to and enrollment in an eligible postsecondary institution. Qualifying for the Tennessee Promise Scholarship does not guarantee admission to an eligible postsecondary institution.

(Rule 1640-01-26-.04, continued)

***Authority**: T.C.A. §§ 49-4-201, 49-4-204, and 49-4-708.* ***Administrative History:** Emergency rule filed August 14, 2014; effective through February 10, 2015. Original rule filed August 14, 2014; effective November 12, 2014. Amendment filed December 19, 2014; effective March 19, 2015.*

1640-01-26-.03 APPLICATION PROCESS.

(1) Students participating in the Tennessee Promise Scholarship program shall file a FAFSA, or renewal FAFSA, in each year of program participation. The FAFSA must be submitted by mail or electronically as directed in the FAFSA instructions.

(2) Students enrolled in a community college, public four-year postsecondary institution, or private institution shall file the FAFSA or renewal FAFSA according to the following deadlines:

(a) No later than February 15 for fall enrollment, or

(b) No later than November 1 for spring and summer enrollment.

(3) Students enrolled in a TCAT shall file the FAFSA or renewal FAFSA according to the following deadlines:

(a) No later than February 15 for summer and fall enrollment, or

(b) No later than November 1 for spring enrollment.

(4) Students are required to complete the Tennessee Promise Scholarship award application for the initial year of enrollment no later than November 1 of their senior year of high school. For each successive year of participation students shall submit a renewal application no later than July 1 prior to the successive academic year giving notice to TSAC of their intent to participate in the Tennessee Promise Scholarship program. If either deadline occurs on a weekend or state holiday, then the application deadline will be the next business day.

***Authority**: T.C.A. §§ 49-4-201, 49-4-204, and 49-4-708.* ***Administrative History:** Emergency rule filed August 14, 2014; effective through February 10, 2015. Original rule filed August 14, 2014; effective November 12, 2014.*

1640-01-26-.04 ELIGIBILITY – TENNESSEE PROMISE SCHOLARSHIP PROGRAM.

(1) To be eligible to receive a Tennessee Promise Scholarship a student shall:

(a) Be a Tennessee resident;

(b) Graduate from an eligible high school, graduate high school as a dependent child of a military parent as outlined in T.C.A. § 49-4-926, complete high school as a home school student, or obtain a GED or HiSET diploma, provided that the student obtains a GED or HiSET diploma prior to the student reaching nineteen (19) years of age;

(c) Attend full time in an eligible postsecondary institution in the fall term immediately following graduation from an eligible high school or home school, or attainment of the GED or HiSET diploma; except that a student enrolling in a certificate or diploma program at a TCAT may enroll in the summer prior to the fall term;

(d) Maintain continuous enrollment as a full-time student at an eligible postsecondary institution unless granted a medical or personal leave of absence;

(Rule 1640-01-26-.04, continued)

(e) Maintain a minimum cumulative grade point average of 2.0, as determined by the eligible postsecondary institution, at the end of each academic year if enrolled in an associate degree program, or maintain satisfactory academic progress as determined by the TCAT;

(f) Comply with United States Selective Service System requirements for registration, if such requirements are applicable to the student;

(g) Be in compliance with federal drug-free rules and laws for receiving financial assistance;

(h) Not be in default on a federal Title IV educational loan or Tennessee educational loan;

(i) Not owe a refund on a federal Title IV student financial aid program or a Tennessee student financial aid program;

(j) Not be incarcerated;

(k) Not have earned an associate degree prior to enrolling in the initial academic term following graduation from a high school or home school program;

(l) Prior to initial fall enrollment in a postsecondary institution, attend one mandatory meeting related to financial aid and FAFSA completion, and the college application process; and a second mandatory meeting related to college orientation. Participants may, but are not required to, attend additional meetings as offered by a Partnering Organization;

(m) Complete ~~a minimum of~~ eight (8) hours of community service for each semester while participating in the Tennessee Promise Scholarship program; and

(n) ~~Complete FAFSA verification, if selected by the postsecondary institution,~~ Submit all necessary documentation to allow the postsecondary institution to complete FAFSA verification by August 1 if enrolled at a two-year or four-year eligible institution or by October 1 if enrolled at a TCAT. Verification shall be completed regardless of eligibility for federal or state grants.

Authority: *T.C.A. §§ 49-4-201, 49-4-204, and 49-4-708.* ***Administrative History:*** *Emergency rule filed August 14, 2014; effective through February 10, 2015. Original rule filed August 14, 2014; effective November 12, 2014. Repeal and new rule filed December 19, 2014; effective March 19, 2015.*

1640-01-26-.05 ELIGIBILITY - EARLY HIGH SCHOOL GRADUATION.

(1) A student who graduates early from an eligible high school, or completes an eligible home school program or obtains a GED or HiSET diploma prior to the spring semester preceding the initial fall enrollment may immediately enroll in an eligible postsecondary institution. Such student shall not be eligible for the Tennessee Promise Scholarship until the subsequent fall semester, but shall otherwise meet all initial eligibility requirements, and upon receipt of a Tennessee Promise Scholarship meet all continuing eligibility requirements as outlined in these rules.

(2) Notwithstanding the provisions of this section, a student may be eligible for a Tennessee Promise Scholarship at a TCAT prior to the subsequent fall term if eligible for an exception as provided in these rules.

(Rule 1640-01-26-.05, continued)

(3) During all academic terms in which a student is enrolled in a postsecondary institution prior to the fall term following graduation from an eligible high school, the student shall:

(a) Enroll in an eligible postsecondary institution or a regionally accredited postsecondary institution located outside this state;

(b) Attend all mandatory meetings provided by the Partnering Organization;

(c) Not be required to participate in community service, except that the student must complete the amount of community service required by Tenn. Comp. R. & Regs. 1640-01-26-.07(1) before the subsequent fall semester; and

(d) Have no minimum requirement for credit hours or academic performance.

Authority: *T.C.A. §§ 49-4-201, 49-4-204, and 49-4-708.* ***Administrative History:*** *Emergency rule filed August 14, 2014; effective through February 10, 2015. Original rule filed August 14, 2014; effective November 12, 2014.*

1640-01-26-.06 PERSONAL OR MEDICAL LEAVE OF ABSENCE.

(1) A student may be granted a medical or personal leave of absence from timely enrollment in the initial semester, full-time attendance, or continuous enrollment at an eligible postsecondary institution as long as all other applicable eligibility criteria are met. Allowable medical or personal reasons may include illness of the student; illness or death of an immediate family member; extreme financial hardship of the student or student's immediate family; fulfillment of a religious commitment ~~expected~~ encouraged of members of that faith; fulfillment of required ~~military service~~ initial active duty for training as a National Guard or Reserve member or for National Guard or Reserve mobilization; ~~the~~ attendance in a program of study at a TCAT which only begins in the spring or summer academic term or when openings are unavailable for the fall academic term; full-time attendance at an eligible four-year postsecondary institution while waiting for admission to an eligible postsecondary program; or other extraordinary circumstances beyond the student's control where attendance by the student creates a substantial hardship. In the event an institution denies a student's request for a medical or personal leave of absence, the student may appeal the decision in accordance with these rules.

(2) A student granted a medical or personal leave of absence shall enroll full time in an eligible postsecondary institution in the first semester following the end of the leave of absence and ~~who resumes full-time attendance at an eligible postsecondary institution~~ shall retain the Tennessee Promise Scholarship until a terminating event occurs. ~~However, a leave of absence of six (6) months or less shall not count against the two and one-half years from the date of the student's initial enrollment at an eligible postsecondary institution.~~ A leave of absence of six (6) months or less shall not count against the five semester limit at an eligible postsecondary institution, and a leave of absence may extend beyond six (6) months for military, religious, or other extraordinary circumstances as described in this rule.

Authority: *T.C.A. §§ 49-4-201, 49-4-204, and 49-4-708.* ***Administrative History:*** *Emergency rule filed August 14, 2014; effective through February 10, 2015. Original rule filed August 14, 2014; effective November 12, 2014.*

1640-01-26-.07 COMMUNITY SERVICE PROGRAM REQUIREMENTS.

(1) A student participating in the Tennessee Promise Scholarship program shall perform ~~a minimum of~~ eight (8) hours of community service for each semester the scholarship is received. Service shall be performed prior to the beginning of each academic semester,

including the initial fall semester, in which the Promise Scholarship is received according to the following deadlines:

(a) August 1 for students attending the fall academic term.

(b) December 1 for students attending the spring academic term.

(c) May 1 for students attending the summer academic term.

(2) A student who is granted a leave of absence which precludes the performance of community service shall complete the community service in the first academic term following the period for which the leave of absence was granted. Such community service shall be in addition to any other community service required in the same academic term.

(3) Upon completion of the community service, each student shall verify to the Partnering Organization a description of service performed, the date(s) the service was performed, the total hours of service provided, and the name and address of the organization for which the service was provided.

(4) Community Service shall not include:

(a) Service performed prior to the January preceding the initial academic term;

(b) Service resulting in payment or remuneration of any kind; or

(c) Service that directly benefits family members.

(5) Community service may be performed with or under the direction of a faith-based organization, but shall not include religious persuasion or proselytizing.

(6) Community service in excess of eight (8) hours performed in any semester shall not be carried over into subsequent semesters. Unless the student is on an approved leave of absence, failure to complete the eight (8) hours of community service prior to an academic semester will result in the immediate termination of eligibility for the Tennessee Promise Scholarship. Community service performed during an approved leave of absence shall count towards fulfillment of the community service requirement in the first semester following the leave of absence.

(7) A student who knowingly provides false verification of community service shall be ineligible to receive additional benefits under the Tennessee Promise Scholarship program.

Authority: *T.C.A. §§ 49-4-201, 49-4-204, and 49-4-708.* ***Administrative History:*** *Emergency rule filed August 14, 2014; effective through February 10, 2015. Original rule filed August 14, 2014; effective November 12, 2014. Repeal and new rule filed December 19, 2014; effective March 19, 2015.*

1640-01-26-.08 SELECTION OF PARTNERING ORGANIZATIONS.

(1) To participate in the Tennessee Promise Scholarship program, a Partnering Organization shall be recommended by the mayor or executive of each county in which the Partnering Organization participates and approved by the Board of Directors.

(2) An approved Partnering Organization may continue to serve in such capacity unless it is no longer recommended by a county mayor or executive or approved by the Board of Directors. Final approval to serve as a Partnering Organization shall be given at the discretion of the

(Rule 1640-01-26-.08, continued)

Board of Directors and based on the Partnering Organization's satisfactory performance and compliance with these rules.

(3) A negative recommendation by one county mayor or executive shall not automatically disqualify the Partnering Organization from participating in other counties but will be considered in the Board of Directors' evaluation of the Partnering Organization's continued participation in the Program.

Authority: *T.C.A. §§ 49-4-201, 49-4-204, and 49-4-708.* ***Administrative History:*** *Emergency rule filed August 14, 2014; effective through February 10, 2015. Original rule filed August 14, 2014; effective November 12, 2014.*

1640-01-26-.09 PARTNERING ORGANIZATION REQUIREMENTS.

(1) Partnering Organizations that participate in the Tennessee Promise Scholarship program shall meet the following requirements:

(a) Be established as a not-for-profit organization, except that a postsecondary institution that receives funding under the Tennessee Promise Scholarship program shall not be permitted to participate as a partnering organization.

(b) Operate as a college access and success program serving Tennessee residents at an eligible postsecondary institution.

(c) Demonstrate annually to TSAC that funding exists within the Partnering Organization's budget to provide all services under the Tennessee Promise Scholarship program for a minimum of one (1) year. No funds under this program shall be provided for the direct or indirect benefit of a Partnering Organization.

(d) Adhere to rules promulgated by TSAC for the administration of this program.

(e) Provide a mentoring program with a ratio of one (1) volunteer mentor to no more than ten (10) eligible student applications. This ratio shall apply to eligible student applications and may be reduced in proportion to the number of students who drop from participation in the program.

The minimum age and ratio requirements shall not apply to full- or part-time paid mentors or counselors that work directly with students.

(f) Select volunteer mentors prior to December 1 for the following academic year and provide one (1) mandatory training meeting for all paid and volunteer mentors prior to January 31. This meeting may be offered on multiple dates prior to the January 31 deadline. This meeting shall cover at least the following topics:

1. Program overview,

2. Appropriate mentor-student relationships,

3. Financial aid,

4. FAFSA completion,

5. College applications and admissions, and

6. Community service requirements.

(Rule 1640-01-26-.09, continued)

(g) Provide one (1) mandatory meeting for all Tennessee Promise Scholarship program participants prior to March 1 preceding the initial enrollment in an eligible postsecondary institution. This meeting may be offered on multiple dates prior to the March 1 deadline, and shall provide training on the following topics:

1. An overview of the Tennessee Promise Scholarship program,
2. Appropriate relationships with mentors,
3. Financial aid opportunities,
4. FAFSA completion, and
5. The college application process.

(h) Provide one (1) mandatory meeting for all Tennessee Promise Scholarship program participants after March 1 and prior to May 31 preceding the initial enrollment in an eligible postsecondary institution. This meeting may be offered on multiple dates prior to the May 31 deadline and shall provide training on topics related to college orientation, making the transition from high school to college, and community service requirements.

(i) Where a student cannot attend either mandatory meeting due to required attendance at a school-sponsored activity, required attendance at a religious-based activity, documented illness of the student, or other extenuating circumstances, the Partnering Organizations shall provide opportunities for the student to receive the training prior to the March 1 ~~and~~ or May 31 deadline, or as soon thereafter as practicable.

(j) Provide a minimum of one (1) mentor contact monthly with each assigned Tennessee Promise Scholarship program participant beginning February 1 of the senior year of high school. Contact shall be maintained throughout the student's participation in the Program.

(k) Organize a local advisory council to serve as an advocate for the Program. The advisory council shall be comprised of a minimum of five (5) members, with at least one (1) member representative from each the local education agency, the county mayor's or executive's office, and a local postsecondary institution. Organizations that have been in existence for a minimum of three (3) years may use existing boards or boards of trustees as the local advisory council if the board or board of trustees is substantially similar to the requirements of this subsection.

(l) Obtain a certified background check on all mentors prior to service as a mentor. A mentor shall not be eligible to participate in the Tennessee Promise Scholarship program if convicted of any felony or offense listed at T.C.A. §§ 39-13-527, 39-13-532, 39-17-417, and 40-35-501(i)(2). For purposes of this section, "conviction" includes entry of a plea of guilty or nolo contendere or entry of an order granting pre-trial or judicial diversion.

(m) Submit to audits on a periodic basis as determined by TSAC.

(n) Enter into a memorandum of understanding with TSAC regarding program requirements and Partnering Organization obligations and provide requested information to TSAC as required in the memorandum of understanding.

(Rule 1640-01-26-.09, continued)

(o) Provide electronic notification to TSAC when Tennessee Promise participants have completed their mandatory meetings and community service requirements. Reporting of community service performed in the previous academic term shall be provided to TSAC for each student no later than:

1. August 15 for students attending the fall academic term.

2. December 15 for students attending the spring academic term.

3. May 15 for students attending the summer academic term.

(p) Provide performance metrics as outlined in the memorandum of understanding entered into with TSAC.

(q) Obtain an insurance policy that, at a minimum, limits liability of the Partnering Organization against physical and sexual abuse or misconduct directed toward participants of the Program by its officers, directors, employees, and volunteers.

Authority: *T.C.A. §§ 39-13-527, 39-13-532, 39-17-417, 40-35-501, 49-4-201, 49-4-204, and 49-4-708.* ***Administrative History:*** *Emergency rule filed August 14, 2014; effective through February 10, 2015. Original rule filed August 14, 2014; effective November 12, 2014. Repeal and new rule filed December 19, 2014; effective March 19, 2015.*

1640-01-26-.10 PARTNERING ORGANIZATIONS – SERVICE IN COUNTIES.

(1) A Partnering Organization that agrees to provide Tennessee Promise Scholarship program services in a county shall make the program available to all eligible high school, home school, and GED/HiSET students in that county. The Partnering Organization shall continue to work with students from that county through a terminating event, regardless of which eligible postsecondary institution the student attends. Partnering Organizations may work with students from high schools or counties outside their assigned counties as agreed upon between the Partnering Organizations.

Authority: *T.C.A. §§ 49-4-201, 49-4-204, and 49-4-708.* ***Administrative History:*** *Emergency rule filed August 14, 2014; effective through February 10, 2015. Original rule filed August 14, 2014; effective November 12, 2014.*

1640-01-26-.11 TERMINATING EVENTS

(1) A student shall receive the Tennessee Promise Scholarship until reaching a terminating event as outlined in T.C.A. § 49-4-708.

Authority: *T.C.A. §§ 49-4-201, 49-4-204, and 49-4-708.* ***Administrative History:*** *Emergency rule filed August 14, 2014; effective through February 10, 2015. Original rule filed August 14, 2014; effective November 12, 2014.*

1640-01-26-.12 TENNESSEE PROMISE SCHOLARSHIP REFORMS.

(1) In the event funds are insufficient to fully fund the cost of Tennessee Promise scholarships, TSAC is authorized to take one or more of the following actions:

(a) Establish a maximum award amount,

(b) Establish additional eligibility criteria for new applicants entering the program,

(Rule 1640-01-26-.12, continued)

(c) Administer the program on a first-come, first-served basis.

(2) Any action taken by TSAC as described in subsection (1) shall require approval by TSAC's board of directors and notification shall be provided to the chairs of the Senate and House Education Committees of the Tennessee General Assembly.

Authority: *T.C.A. §§ 49-4-201, 49-4-204, and 49-4-708.* ***Administrative History:*** *Emergency rule filed August 14, 2014; effective through February 10, 2015. Original rule filed August 14, 2014; effective November 12, 2014.*

1640-01-26-.13 CERTIFICATION OF ELIGIBILITY.

(1) Each Partnering Organization shall determine student eligibility based on attendance at mandatory meetings and fulfillment of community service requirements as required in these rules, and shall certify such eligibility to TSAC.

(2) TSAC will create a master certification roster of students for each institution. The master list will contain students who have met all requirements for the Tennessee Promise Scholarship.

(32) The eligible postsecondary institution ~~will be responsible for certifying~~ shall certify each student's eligibility for a financial award from the Tennessee Promise Scholarship based on continuing eligibility requirements established in these rules. The award amount reported to TSAC shall be the amount of tuition and mandatory fees remaining after other gift aid has first been applied to the student's tuition and mandatory fees. All tuition waivers and discounts for which a student or parent qualifies shall first be deducted from the student's tuition and mandatory fees before gift aid is credited.

(43) Once the eligible postsecondary institution has certified the student's eligibility for a financial award, the certification information shall be electronically transmitted to TSAC.

(54) TSAC shall process a payment request directly to the eligible postsecondary institution on behalf of all Tennessee Promise Scholarship recipients who are eligible for a financial award. No funds shall be disbursed directly to the Partnering Organizations or to the students.

Authority: *T.C.A. §§ 49-4-201, 49-4-204, and 49-4-708.* ***Administrative History:*** *Emergency rule filed August 14, 2014; effective through February 10, 2015. Original rule filed August 14, 2014; effective November 12, 2014.*

1640-01-26-.14 EVALUATION OF THE TENNESSEE PROMISE SCHOLARSHIP.

(1) TSAC, along with the Tennessee Higher Education Commission, shall review the Tennessee Promise Scholarship program annually. The review shall include, at a minimum, the number of recipients, total cost of the program, student persistence, hours of community service completed, and scholarship retention. These findings shall be reported to the education committee members of the Senate and House of Representatives of the Tennessee General Assembly.

(2) TSAC shall convene a meeting of its Special Advisory Committee at least annually to review the effectiveness and best practices of the Tennessee Promise Scholarship program.

Authority: *T.C.A. §§ 49-4-201, 49-4-204, and 49-4-708.* ***Administrative History:*** *Emergency rule filed August 14, 2014; effective through February 10, 2015. Original rule filed August 14, 2014; effective November 12, 2014.*

1640-01-26-.15 AWARD MADE IN ERROR.

(1) Repayment from the student shall not be required if TSAC determines that the error was through no fault of the student.

(2) Repayment from the student shall be required if TSAC determines that fraud was committed or the error was due to the fault of the student. When repayment is required, the student may not receive additional student aid from TSAC until repayment is made.

(3) Repayment from the postsecondary institution will be required if TSAC determines that the error was due to the fault of the postsecondary institution.

Authority: *T.C.A. §§ 49-4-201, 49-4-204, and 49-4-708.* ***Administrative History:*** *Emergency rule filed August 14, 2014; effective through February 10, 2015. Original rule filed August 14, 2014; effective November 12, 2014.*

1640-01-26-.16 REFUND POLICY.

(1) If a recipient of a Tennessee Promise Scholarship award fails to complete a semester for any reason, the eligible postsecondary institution shall apply its refund policy to determine whether a refund may be required and funds returned to TSAC. The eligible postsecondary institution shall provide the student with a notice indicating the amount to be returned to the student or the amount to be refunded to TSAC. Additionally, the eligible postsecondary institution shall notify TSAC of the refund, which shall be noted on the student's record. The eligible postsecondary institution shall also be responsible for obtaining repayment from the student. The student shall be ineligible for student aid from TSAC until the refund is paid.

Authority: *T.C.A. §§ 49-4-201, 49-4-204, and 49-4-708.* ***Administrative History:*** *Emergency rule filed August 14, 2014; effective through February 10, 2015. Original rule filed August 14, 2014; effective November 12, 2014.*

1640-01-26-.17 TRANSFER STUDENTS.

(1) A student who meets all academic and non-academic requirements of the Tennessee Promise Scholarship may transfer from one eligible postsecondary institution to another eligible postsecondary institution and maintain the scholarship, provided the student is able to complete the diploma or associate degree in the amount of time remaining before reaching a terminating event as outlined in T.C.A § 49-4-708.

Authority: *T.C.A. §§ 49-4-201, 49-4-204, and 49-4-708.* ***Administrative History:*** *Emergency rule filed August 14, 2014; effective through February 10, 2015. Original rule filed August 14, 2014; effective November 12, 2014.*

1640-01-26-.18 APPEAL AND EXCEPTION PROCESS.

(1) Each eligible postsecondary institution shall use their existing Institutional Review Panel (IRP) for purposes of reviewing and rendering decisions regarding appeals for the Tennessee Promise Scholarship program. The IRP shall use the same procedures and timelines as those that currently exist for the review of Tennessee Education Lottery Scholarship (TELS) appeals as outlined in Tenn. Comp. R. & Reg. 1640-01-19.

(2) TSAC shall use the existing TELS Appeals Panel to consider appeals and render decisions for those students who appeal a decision made by the IRP. The same guidelines shall exist for appeals of the Tennessee Promise Scholarship program as those that are currently in place for TELS as outlined in Tenn. Comp. R & Reg.1640-01-19.

(Rule 1640-01-26-.18, continued)

Authority: *T.C.A. §§ 49-4-201, 49-4-204, 49-4-708, and 49-4-924.* ***Administrative History:*** *Emergency rule filed August 14, 2014; effective through February 10, 2015. Original rule filed August 14, 2014; effective November 12, 2014.*

The vote by the Agency on these rules was as follows:

Board Member	Aye	No	Abstain	Absent
Governor Haslam, by Mr. Mark Cate	X			
Dr. Russ Deaton	X			
Dr. Claude Pressnell	X			
Mr. David H. Lillard, Jr.	X			
Comptroller Justin P. Wilson	X			
Commissioner Larry Martin, by Mr. David Thurman	X			
Commissioner Candice McQueen, by Dr. Danielle Mazera				X
Chancellor John Morgan, by Mr. David Gregory	X			
Dr. Joe Dipietro, by Dr. Katie High				X
Dr. Gary Weedman	X			
Dr. J. Gary Adcox	X			
Ms. Celena Tulloss	X			
Ms. Keri McInnis	X			
Dr. LaSimba Gray, Jr.				X
Mr. Tom Hughes	X			
Ms. Sydney Jones				X

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

Date: 6/15/15

Signature:

Name of Officer: Dr. Russ Deaton

Title of Officer: Interim Executive Director

CORSINA DICKSON-WILLS STATE OF TENNESSEE NOTARY PUBLIC Comm. Exp. 08-23-2016 DAVIDSON COUNTY

Subscribed and sworn to before me on: 06-15-15

Notary Public Signature:

My commission expires on: 08-23-2016

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

7/28/2015
Date

Department of State Use Only

Filed with the Department of State on: 8/4/15

Effective for: 180 *days

Effective through: 1/31/16

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

Tre Hargett
Secretary of State

RECEIVED
2015 AUG -4 PM 2:26
SECRETARY OF STATE
PUBLICATIONS

G.O.C. STAFF RULE ABSTRACT

BOARD**:**	University of Tennessee Board of Trustees
CAMPUS:	Knoxville
SUBJECT:	Student Rights and Responsibilities
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 49-9-209(e)
EFFECTIVE DATES:	August 12, 2015 through February 8, 2016
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	The emergency rule changes rules for the Knoxville campus concerning student conduct involving sexual misconduct, domestic violence, dating violence, and stalking. According to the Board, the changes were necessary to comply with Title IX and the Clery Act, as amended by the Violence Against Women Reauthorization Act. Specifically, the emergency rule adds definitions, clarifies some existing definitions including the definition for "weapon" and the description of "disorderly conduct", and clarifies the University's investigative responsibilities and the rights of the complainant and respondent.

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)

The University of Tennessee anticipates that this rule change will have minimal to no impact on local governments.

Department of State
Division of Publications
312 Rosa L. Parks, 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: 08-10-15
Rule ID(s): 6000
File Date (effective date): 8/12/15
End Effective Date: 2/8/16

Emergency Rule Filing Form

Emergency rules are effective from date of filing for a period of up to 180 days.

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

Rule Type:
x Emergency Rule

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

Statement of Necessity:
The need for this rule relates to the University of Tennessee's need to comply with Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. § 1681, and the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act), 20 U.S.C. § 1092f. From April 2011 through April 2014, the United States Department of Education's Office for Civil Rights (OCR) issued multiple guidance documents concerning the obligations of colleges and universities under Title IX to investigate and respond to reports of student-on-student sexual violence. In 2013, Congress passed and the President signed the Violence Against Women Reauthorization Act (VAWA). VAWA amended the Clery Act and imposed new obligations on universities relating to sexual assault, domestic violence, dating violence, and stalking. On July 1, 2015, regulations implementing VAWA will take effect. During the 2014-2015 academic year, in response to OCR's Title IX guidance and VAWA, all University of Tennessee (UT) campuses implemented interim policies on sexual misconduct, domestic violence, dating violence, and stalking. While the interim policies were in effect, the campuses sought and received input on the policies from students, faculty, and staff. In Fall 2015, all campuses will issue final policies on sexual misconduct, domestic violence, dating violence, and stalking. All campuses have proposed revisions to their student conduct rules that make those rules compliant with Title IX and the Clery Act (as amended by VAWA) and consistent with the standards of conduct, definitions, rights, and procedures outlined in their policies on sexual misconduct, domestic violence, dating violence, and stalking.

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/RuleTitle per row)

Chapter Number	**Chapter Title**
1720-04-03	Student Rights and Responsibilities
Rule Number	**Rule Title**
1720-04-03-.02	Definitions
1720-04-03-.04	Fundamental Rights of the Accused
1720-04-03-.05	Standards of Conduct

RULES
OF
THE UNIVERSITY OF TENNESSEE
(KNOXVILLE)

CHAPTER 1720-04-03
STUDENT RIGHTS AND RESPONSIBILITIES

1720-04-03-.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) 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.

1720-04-03-.02 DEFINITIONS.

(1) The term "University" means the University of Tennessee.

(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 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 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 ~~and replica~~), 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 ~~3~~four (4) inches. The term "weapon" does not include pocket knives that fold (but 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 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. ~~by regular mail or courier service, electronic mail, or hand delivery.~~

(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.

1720-04-03-.03 JURISDICTION.

(1) The Standards of Conduct, Chapter 1720-04-03-.05, 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.

1720-04-03-.04 FUNDAMENTAL RIGHTS ~~OF THE ACCUSED~~.

(1) Students and student organizations charged with violating the Standards of Conduct, Chapter 1720-04-03-.05, are entitled to the following rights under the University of Tennessee, Knoxville's student judicial system:

(a) Notice of charge(s), account of the alleged misconduct, witnesses, and notice of the scheduled hearing delivered 72 hours before the hearing. The student may request additional time by showing good cause.

(b) Notice of the maximum allowable penalty (i.e., permanent dismissal).

(c) The right to a hearing closed to the public.

(d) The right to: (i) a non-adversarial hearing before the Director of Judicial Affairs or his/her designee; or (ii) an adversarial hearing before a University hearing board with jurisdiction.

(e) The right to be assisted by a Student Judicial Advisor before a University hearing board. If an adversarial criminal proceeding has been initiated against a student (e.g., a criminal charge or indictment) arising out of the same conduct at issue in the disciplinary hearing, then the student also has a right to have an attorney present during the hearing before a University hearing board. The attorney's role shall be limited to advising the student about answering questions that may be self-incriminating.

(f) Testify or remain silent in a University hearing at his/her option. However, a University hearing board is not prohibited from drawing an adverse inference against a student if the student remains silent or refuses to attend a disciplinary hearing or testify in response to evidence offered against him/her. A University hearing board shall not base its decision solely on a student's failure to attend a hearing or a student's refusal to testify or remain silent.

(g) Present the testimony of witnesses and other evidence.

(h) The presumption of innocence. The burden of proof rests with the University, such that the University must prove the student's guilt by a preponderance of the evidence.

(i) A written decision specifying the rule violated, penalty assessed, and right of appeal.

(j) Challenge the seating of any board member for good cause. The dismissal of a challenged hearing board member shall be at the discretion of the hearing board chairperson. If the chairperson is challenged, he/she may be excused at the discretion of the majority of the hearing board.

(k) Have his/her case heard only on the misconduct specified in the written notice.

(l) Challenge the admissibility of evidence.

(m) Cross-examine all available adverse witnesses.

(n) Appeal the decision of a University disciplinary board in accordance with Chapter 1720-04-03-.12.

(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, a copy of which is published at sexualassault.utk.edu. 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. ~~In cases of involving a complaint of sexual assault or misconduct, the alleged victim shall have the right to:~~

~~(a) notice concerning the process by which the University will handle the complaint and an opportunity to ask questions about the process;~~

~~(b) a prompt, thorough, and impartial investigation of the complaint;~~

~~(c) the same opportunity as the accused student to present his/her explanation of the facts during the University's investigation;~~

~~(d) have the investigation of the complaint concluded within sixty (60) days of the University's receipt of a complaint, unless circumstances make it impracticable for the University to complete its investigation within that timeframe;~~

~~(e) notice of the outcome of the University's investigation;~~

~~(f) have a disciplinary hearing conducted within thirty (30) days of a University charge that the accused student committed sexual assault or misconduct, unless circumstances make it impracticable for the University to conduct a hearing within that timeframe;~~

~~(g) notice of the date, time, and location of the disciplinary hearing, the right to have the disciplinary hearing closed to the public, and the right to request rescheduling of the hearing for good cause;~~

~~(h) the same access as the accused student to any information or documents that will be used by the University during the disciplinary hearing, unless prohibited by law;~~

~~(i) challenge the seating of any disciplinary board member for good cause, which will be determined at the discretion of the chairperson of the hearing board, or, if the seating of the chairperson is challenged, then at the discretion of the majority of the hearing board;~~

~~(j) be accompanied by a person, other than a Student Judicial Advisor, of his/her choosing during the University's investigation or a disciplinary hearing, but the person shall not be permitted to speak for the victim during a disciplinary hearing;~~

~~(k) the same opportunity as the accused student to be present during the hearing, present witnesses and other evidence through a Student Judicial Advisor, challenge the admissibility of evidence through a Student Judicial Advisor, and cross-examine adverse witnesses through a Student Judicial Advisor during the disciplinary hearing;~~

~~(l) testify or remain silent in a hearing at his/her option;~~

~~(m) not to be questioned directly by the accused student during the disciplinary hearing;~~

~~(n) submit a written impact statement to the Student Disciplinary Board for consideration of the sanctioning phase of the disciplinary hearing, if the student is found guilty of the charges against him/her, or to the Office of Student Judicial Affairs for consideration during the sanctioning phase of the administrative hearing, if the accused student pleads guilty to the charges against him/her;~~

~~(o) notice of the decision of the Student Disciplinary Board or the outcome of an administrative hearing within three (3) business days of the hearing; and~~

~~(p) appeal the decision of a University disciplinary board in accordance with Chapter 1720-04-03-.12(3).~~

(3) As an alternative to the procedures described in this Chapter, any student or student organization whose legal rights, duties or privileges are required by any statute or constitutional provision to be determined after an opportunity for a hearing shall be afforded that opportunity for hearing in accordance with the ~~Tennessee~~ Uniform Administrative Procedures Act, Tennessee Code Annotated, § 4-5-301, *et seq.* The University's procedures for conducting contested case hearings under the ~~Tennessee~~ Uniform Administrative Procedures Act are contained in Chapter 1720-01-05, and the University's rules concerning waivers of contested case hearings are contained in Chapter 1720-01-03.

1720-04-03-.05 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 Statement.

(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~~, although the speaker need not mean to carry out the act of unlawful violence in order to constitute a violation of this rule~~.

(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.~~Sexual assault or misconduct. "Sexual assault" is defined as any sexual act or attempt to engage in any sexual act with another person without the consent of the other person, or in circumstances in which the person is unable to give consent due to age, disability, or an alcohol/chemical or other impairment. "Sexual misconduct" is defined as any intimate touching of another person, or forcing a person to engage in intimate touching of another, without the consent of the other person, or in circumstances in which the person is unable to give consent due to age, disability, or an alcohol/chemical or other impairment. It is the responsibility of the person initiating sexual activity to ensure the other person is capable of consenting to that activity. Consent is given by an affirmative verbal response or acts that are unmistakable in their meaning. Consent to one form of sexual activity does not mean consent is given to another type of sexual activity.~~

(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.

~~(12)~~(13) Engaging in ~~disorderly,~~ lewd, indecent, or obscene conduct. ~~"Disorderly" conduct means fighting or other physically violent or 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.~~ "Lewd, indecent, or obscene" conduct includes, but is not limited to, public exposure of one's sexual organs, public urinating, and public sexual acts.

~~(13)~~(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.

~~(14)~~(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.

~~(15)~~(16) Possessing, using, or duplicating University keys, access cards, or identification cards without authorization; possessing, using, or entering University-controlled property without authorization.

~~(16)~~(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.

~~(17)~~(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.

~~(18)~~(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.

~~(19)~~(20) Consuming, manufacturing, possessing, distributing, dispensing, selling, or being under the influence of alcoholic beverages, if prohibited by federal, state, or local law.

~~(20)~~(21) Providing an alcoholic beverage to a person younger than twenty-one (21) years of age.

~~(21)~~(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.

~~(22)~~(23) Failing to pay a University bill, account, or other University financial obligation.

~~(23)~~(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.

~~(24)~~(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.

~~(25)~~(26) Violating the terms of an interim suspension, a no-contact directive, or a disciplinary penalty imposed by the University.

~~(26)~~(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.

~~(27)~~(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.

~~(28)~~(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.

~~(29)~~(31) Engaging in retaliation.

1720-04-03-.06 HONOR STATEMENT.

(1) Honor Statement. An essential feature of the University of Tennessee, Knoxville is a commitment to maintaining an atmosphere of intellectual integrity and academic honesty. 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) A thorough understanding of the Honor Statement is essential to the success of the honor system. To facilitate implementation of the Honor Statement, the following avenues will be utilized:

(a) The Honor Statement, with its attendant pledge, will appear on applications for admission (undergraduate and graduate); and applicants to the University will be required to acknowledge their affirmation by signing the document in a designated location.

(b) Information regarding the Honor Statement will be included in the catalogs (undergraduate and graduate), *Hilltopics*, and in a brochure specifically addressing the Honor Statement at UT.

(c) The Honor Statement will be discussed during freshman, transfer, graduate student, and international student orientation programs.

(d) A thorough discussion of the Honor Statement in freshmen English is encouraged.

(e) Implementation methods and alternatives will be discussed during faculty orientation programs.

(f) The Honor Statement is furthered by Standard of Conduct No. 1, Chapter 1720-04-03-.05.

(3) Prohibited Conduct.

(a) The Honor Statement prohibits cheating, plagiarism, and any other type of academic dishonesty.

(b) 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 a 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 in part, created by a professional service and used without attribution (e.g., paper, speech, bibliography, or photograph).

(c) 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. 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.

(4) Responsibilities.

(a) All groups within the University community have responsibilities associated with the Honor Statement. These responsibilities are unique to each sector of the University community.

(b) Student Responsibilities. Each student is responsible for his/her own personal integrity in academic life. While 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 act on any violation of the Honor Statement. 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 each graded class assignment and examination.

(c) Instructor Responsibilities. Regulation of 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.

(5) Process.

(a) When an act of alleged academic dishonesty is discovered by or brought to the attention of an instructor, the instructor shall inform the student orally or in writing about the alleged academic dishonesty, describe the evidence supporting the allegation, and give the student an informal opportunity to respond to the allegation(s) and evidence. 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.

(b) 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 take any or all of the following actions:

1. Impose an academic penalty of a failing or reduced grade in an 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; or an oral or written reprimand.

a. If the instructor decides to impose an academic penalty, then the instructor shall notify the student of the charges, evidence, findings, penalties imposed, and the procedures to appeal the findings and/or penalties. The notice should be countersigned by the department head.

b. Copies of the notice to the student shall be submitted to the Office of Student Judicial Affairs, the administrative head of the instructor's academic unit, and, where different, the head of the academic unit in which the student is enrolled.

c. After receiving notice from the instructor, the Office of Student Judicial Affairs shall provide the student with notice and information relating to an appeal of the instructor's findings of academic dishonesty and/or academic penalties.

2. Request that the Office of Student Judicial Affairs charge the student with violating Standard of Conduct No. 1, Chapter 1720-04-03-.05, and impose one or more of the disciplinary penalties described in Chapter 1720-04-03-.07. The instructor is not required to notify a student that a request has been made to the Office of Student Judicial Affairs.

(c) The Office of Student Judicial Affairs is responsible for determining whether to charge a student with violating Standard of Conduct No. 1. The decision of the Office of Student Judicial Affairs not to charge a student with violating Standard of Conduct No. 1 may not be used by the student to support an appeal of an academic penalty imposed by the instructor. The Office of Student Judicial Affairs may charge a student with violating Standard of Conduct No. 1 regardless of the response of the instructor to the alleged academic dishonesty.

(d) If a student denies a charge of academic dishonesty made by an instructor and/or the Office of Student Judicial Affairs, and/or if the student does not accept the academic penalties imposed by the instructor and/or the penalties recommended by the Office of Student Judicial Affairs, then the student may appeal to the appropriate Academic Review Board within seven (7) days of the written notice of the academic penalty or disciplinary charge, whichever occurs later. If the student does not file a timely notice of appeal, then the determination of academic dishonesty and the recommended academic penalty and/or disciplinary penalty become final.

(6) The University of Tennessee College of Law has adopted and promulgated its own Code of Academic Conduct, Chapter 1720-04-09, which governs academic dishonesty by students enrolled in the College of Law and controls in the event of a conflict between this Chapter and Chapter 1720-04-09.

1720-04-03-.07 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.

(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 Dean of Students 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. 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. Probation may be for a defined or indefinite period. 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. Upon return to the University following a suspension for a specific period of time, the student shall be placed on indefinite disciplinary probation.

(h) 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 Student Affairs Council to lift the suspension. The student will be expected to meet regularly with the Dean of Students, or his/her designee, throughout the period of indefinite suspension. At a minimum, the student is expected to contact and begin meeting regularly with the Dean of Students, or his/her designee, at least 15 weeks prior to the semester for which the student desires to be readmitted to the University. Upon return to the University following an indefinite suspension, the student shall be placed on indefinite disciplinary probation.

(i) Permanent Dismissal. Permanent dismissal means that a student is permanently barred from matriculating as a student at the University of Tennessee, Knoxville. This penalty is used when the violation of one 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. If a disciplinary hearing board desires to impose permanent dismissal, then the board shall

communicate a recommendation of permanent dismissal to the Dean of Students. In the event a recommendation of permanent dismissal is not approved by the Dean of Students, he/she may substitute any less severe penalty; if probation is substituted, it may be for a greater period than the period specified for suspension. The Dean of Students shall notify the Director of Student Judicial Affairs when a recommendation for permanent dismissal is not approved.

(j) Revocation of Degree. Revocation of a degree means revoking a degree already awarded to a student by the University. If a disciplinary hearing board desires to revoke a degree, then the board shall communicate the recommendation to the Dean of Students, who shall either accept or reject the recommendation. Revocation of a degree shall be approved by the University of Tennessee Board of Trustees.

(3) The following penalties, by themselves, do not create a disciplinary record for a student in the Office of Student Judicial Affairs for purposes of reporting a student's conduct history: (a) warning; (b) loss of privilege; (c) education; and (d) restitution. However, those penalties may be considered as part of a student's conduct history for purposes of determining what penalty should be imposed for a future disciplinary offense.

(4) 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. 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.

(5) 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.

(b) Education. 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. 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.

(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. 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 (e.g., mixers, date parties, formals, and band parties) or participate in University-affiliated activities (e.g., Homecoming, All Sing, Carnicus, intramurals). Any exceptions to social probation must be approved, in advance, by the Dean of Students 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 or repeated misconduct, a student organization's University registration may be revoked.

(6) More than one of the penalties listed above may be imposed for any single 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.

(8) Intoxication or impairment because of alcohol, drugs, chemicals, or other substances does not diminish or excuse a violation of the Standards of Conduct.

1720-04-03-.08 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 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 not have verbal, physical, or written contact with specific persons for a definite or indefinite period of time. The student will receive written notice of the no contact directive. Any student, faculty or staff member or other person with a reasonable justification may request that a no contact directive be issued to a student. 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.

1720-04-03-.09 INTERIM SUSPENSION.

(1) When the Vice Chancellor for Student Affairs 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 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.

(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 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 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 Affairs 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 Affairs or his/her designee.

(5) When a student is placed on interim suspension, he/she may be assigned a grade of "W" or "I," whichever is deemed appropriate by the faculty member involved.

1720-04-03-.10 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 alcoholism, drug addiction, mental instability or other physical or psychologically incapacitating illness or condition, he/she may be withdrawn or temporarily suspended from the University as hereinafter provided.

(2) 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 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. A student withdrawn under this procedure shall not be readmitted to the University without the approval of the Vice Chancellor for Student Affairs.

(3) 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 or the Dean of Students. 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.

(4) 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.

1720-04-03-.11 THE HEARING BOARDS.

(1) Greek Judicial Board.

(a) This board has original jurisdiction in cases in which a Greek student organization has allegedly violated the InterFraternity Council (IFC),

Panhellenic, or National Pan-Hellenic Council (NPHC) Rules, Constitution, or By-Laws, or University Standards of Conduct. Hearing procedures shall afford student organizations all of the rights set forth in Chapter 1720-04-03-.04 ("Fundamental Rights of the Accused") and be similar to the procedures used by the Student Disciplinary Board. Following a hearing, the board shall determine guilt or innocence and decide upon an appropriate penalty. Appeals from these decisions are to the Student Tribunal in accordance with Chapter 1720-04-03-.12.

(b) An individual(s) member of a Greek student organization alleged to have violated a University Standard of Conduct will be referred to the Office of Student Judicial Affairs for appropriate action. The Director of Student Judicial Affairs, who will decide all jurisdictional questions, may assign jurisdiction over cases of individual discipline to the Greek Judicial Board, except for cases involving allegations of sexual harassment, sexual assault, or sexual misconduct. In such cases the Greek Judicial Board will operate under the procedures established for the Student Disciplinary Board. Appeals from these decisions are to Student Disciplinary Board and must be filed with the Office of Student Judicial Affairs in accordance with Chapter 1720-04-03-.12.

(c) Students serving as members of the Greek Judicial Board must be active members of a Greek organization and in good standing during their terms of office. Guidelines for appointing, replacing and removing board members will be suggested by the Greek Council to the Office of Student Judicial Affairs for approval. Members of the Greek Judicial Board will be required to participate in training seminars scheduled by the Office of Student Judicial Affairs.

(2) Student Disciplinary Board.

(a) Jurisdiction. The Student Disciplinary Board has the following responsibilities:

1. To hear allegations of student misconduct involving violations of the Standards of Conduct;

2. To determine the innocence or guilt of the student charged and establish an appropriate penalty in cases where the student is found guilty; and

3. To hear individual discipline cases appealed from the Greek Judicial Board and to make decisions appropriate with appellate responsibility.

(b) Membership. Members of the Student Disciplinary Board must be sophomores or above. Undergraduate and law students must have at least a 2.0 overall grade point average. Graduate students must have at least a 3.0 grade point average in all graduate work attempted. Members shall be screened and selected by a committee that consists of Office of Student Judicial Affairs staff. A member may be removed from office, for cause, by the Student Affairs Council following notice and a hearing.

(c) Hearing Procedures.

1. For each hearing, three (3) to seven (7) student board members will be selected from a pool of members. A quorum of three (3) board members must be present in order to hear a case. A majority vote of the members present is required for all decisions of the board. The chairperson votes in all cases.

2. Any board member who cannot hear the evidence fairly and objectively for any reason shall dismiss himself/herself from the case.

3. The Director of Student Judicial Affairs shall appoint a chairperson prior to the start of each hearing. The chairperson shall conduct the hearing and rule on all motions, objections, and other procedural issues. The chairperson shall ascertain that the accused has been advised of his/her rights and shall then read the statement of charges. A student who fails to appear before the Student Disciplinary Board in accordance with proper notification 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 Office of Student Judicial Affairs good cause for granting a continuance of the hearing.

4. 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.

5. The chairperson is responsible for maintaining an orderly discussion throughout the hearing. Proceedings should be conducted with fitting dignity and should reflect the importance

and seriousness of the hearings. Any person who fails to follow the instructions of the chairperson, after a warning, shall be referred to the Director of Student Judicial Affairs for appropriate disciplinary action.

6. In the event that the accused pleads guilty, the board shall review the circumstances of the case and make appropriate decisions or recommendations regarding the penalty.

7. If accused's attorney is present, the accused's attorney shall not question any individual, introduce evidence, raise objections, present arguments, or otherwise participate in the hearing. The failure of an accused's attorney to attend the hearing shall not be grounds for delaying the proceeding or challenging the validity of the proceeding.

8. The Student Judicial Advisor, on behalf of the University, shall present such evidence as he/she has at the hearing, including any witnesses. He/she shall not present written statements as evidence, unless circumstances make such presentation necessary and unavoidable. Under similar restrictions the accused may present written statements in his/her defense. Unsigned statements shall not be admitted as evidence. However, a statement submitted via electronic mail may be admitted if party against whom the statement is offered does not object to its admission or the chairperson determines that the statement's authenticity and validity has been verified. Hearsay evidence is, however, admissible.

9. After the presentation of evidence by the Judicial Advisor, the accused shall be allowed to present all relevant evidence. 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.

10. 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.

11. After a determination of guilt by the board, the Student Judicial Advisor, on behalf of the University, shall present the previous

disciplinary record of the accused, if any, and evidence of any other aggravating circumstances, to the board together with the recommendation of the Director of Student Judicial Affairs as to an appropriate penalty.

12. After presentation of evidence by the Judicial Advisor, the accused shall be allowed to present character evidence, evidence of mitigating circumstances, and an alternative penalty recommendation.

13. After the board determines the penalty, the accused shall be advised in writing of its decision.

14. The results of the board's decision shall be kept on official University judicial forms. If a verbatim record of the hearing is prepared, it shall be retained in the custody of the Office of Student Judicial Affairs and considered a confidential disciplinary record. If necessary for adjudication of an appeal, the Director of Student Judicial Affairs may prepare a summary, certified by the chairperson of the Student Disciplinary Board, or provide that portion of the record that has been designated by the Student Tribunal or Student Affairs Council as material to the appeal.

15. A board member shall not discuss cases prior to or after the hearing. The information received by members of the board during a case is considered strictly confidential. Violations of this confidence by any board member could result in disciplinary action.

16. 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 1720-04-03-.04(2). The board may consider evidence presented by the victim as part of the University's proof.

(d) Appeals. Appeals from decisions of the Student Disciplinary Board may be made to the Student Tribunal in accordance with Chapter 1720-04-03-.12.

(3) Academic Review Boards.

(a) Jurisdiction. Academic Review Boards have original jurisdiction over cases of alleged academic dishonesty (i.e., violations of Standard of Conduct No. 1, Chapter 1720-04-03-.05) that arise out of a course or

program offered by the college or a student's appeal of an academic penalty imposed as a result of alleged academic dishonesty relating to a course or program offered by the college. Jurisdiction may include cases of academic dishonesty which involve violations of other Standards of Conduct, but such cases shall initially be referred to the Office of Student Judicial Affairs for determination of appropriate jurisdiction.

(b) Membership. The Academic Review Board of each college shall consist of an ad hoc group of three faculty members and three students selected from the college's membership by the administrative head of the college. Alternative methods of selection of the three faculty members and the three students may be adopted by an individual college with the approval of the administrative head of the college. Also, under extenuating circumstances, a college may recommend, for approval by the Student Affairs Council, a board composition which differs from that prescribed above.

(c) Hearing Procedures.

1. A quorum shall consist of four (4) members. The college shall make provision for alternates to insure the availability of a quorum.

2. In order to establish continuity among the various Academic Review Boards and to ensure the maintenance of procedural due process, a member of the Dean of Students staff shall serve as the non-voting chairperson of each Academic Review Board. His/her responsibilities shall include the scheduling of meetings, notification of parties and witnesses, and other duties as needed to ensure due process is afforded.

3. Hearing procedures shall be established by the Office of Student Judicial Affairs. Hearing procedures shall afford students all of the rights set forth in Chapter 1720-04-03-.04 ("Fundamental Rights of the Accused") and be similar to the procedures used by the Student Disciplinary Board. All decisions shall be by a majority vote.

(d) Appeals.

1. Appeal of Decision Concerning Academic Dishonesty.

(i) Student Appeal. A student may appeal a decision of the Academic Review Board that a student is guilty of

academic dishonesty to the Student Affairs Council in accordance with Chapter 1720-04-03-.12.

(ii) University Appeal. The University may appeal a decision of the Academic Review Board that a student is not guilty of academic dishonesty to the Student Affairs Council in accordance with Chapter 1720-04-03-.12. The administrative head of the college involved makes the decision whether to appeal.

2. Appeal of Decision Concerning Academic Penalty.

(i) A student may appeal a decision of the Academic Review Board concerning an academic penalty to the Student Affairs Council in accordance with Chapter 1720-04-03-.12.

(ii) If the Academic Review Board recommends that the instructor change the academic penalty proposed by the instructor, the Office of Student Judicial Affairs shall notify the instructor of the Academic Review Board's recommendation. The instructor may either accept or reject the Academic Review Board's recommendation to change an academic penalty, and the instructor or the administrative head of the college involved shall notify the Office of Student Judicial Affairs of the decision to accept or reject the Academic Review Board's recommendation within seven (7) days of the Academic Review Board's recommendation. If the instructor rejects the Academic Review Board's recommendation, then the Office of Student Judicial Affairs shall notify the student of the student's right to appeal the instructor's academic penalty in accordance with Chapter 1720-04-03-.12, in which case the student shall submit the request for appeal within seven (7) calendar days of the notice of the instructor's decision to reject the Academic Review Board's recommendation.

(iii) In the event the instructor rejects the recommendation of the Student Affairs Council following an appeal by the student of an academic penalty, then the student may appeal to the Chancellor, who, in consultation with the Provost, shall be the final decision maker concerning changes to student's grades on the student's official University academic record. The student must file a

request for appeal within seven (7) calendar days of the notice to the student concerning the instructor's rejection of the recommendation of the Student Affairs Council.

(4) Student Tribunal.

(a) Original Jurisdiction. The Student Tribunal has original jurisdiction in cases of conflicts between (non-Greek) student organizations or conflicts between individuals and student organizations, cases which involve interpretation of the Student Government Constitution, cases of challenge to results of Student Government elections, and discipline cases involving charges of dishonesty in these elections.

(b) Appellate Jurisdiction. The Student Tribunal has appellate jurisdiction to review decisions of the Student Disciplinary Board and the Greek Judicial Board. Any other jurisdiction may be assigned by the Director of Student Judicial Affairs. The forms to be used on appeal and other procedural requirements shall be established by the Office of Student Judicial Affairs.

(c) Membership. The Student Tribunal consists of three (3) to seven (7) members, selected by the Director of Student Judicial Affairs or designee from the Student Disciplinary Board.

(d) Hearing Procedures. A quorum of three (3) members is required for a hearing before the Student Tribunal, and a majority vote of the members present is required for all decisions. Other hearing procedures shall be established by the Office of Student Judicial Affairs. In cases of original jurisdiction, the hearing procedures shall afford students all of the rights set forth in Chapter 1720-04-03-.04 ("Fundamental Rights of the Accused") and be consistent with the procedures used by the Student Disciplinary Board.

(e) Appeals. Appeals from decisions of the Student Tribunal may be made to the Student Affairs Council in accordance with Chapter 1720-04-03-.13.

(5) Student Affairs Council.

(a) Jurisdiction. The Student Affairs Council is the hearing board for appeals from decisions of the Student Tribunal, Academic Review Boards, and for appeals filed by the Dean of Students or his/her designee. It is the final decision making board in the judicial system. The Council also hears petitions to lift the disciplinary penalty of indefinite suspension. The Council may periodically review the status of student conduct and the judicial system and make appropriate recommendations.

(b) Membership. The Student Affairs Council is composed of the following members:

1. The Vice Chancellor for Student Affairs, who serves as the chairperson;

2. All the Deans of the University of Tennessee, Knoxville;

3. Three (3) faculty members, associate professor or above, appointed by the Faculty Senate (the initial appointments shall be staggered in terms so that one new faculty member is appointed each year after the initial appointment); and

4. Eight (8) student members (one of whom shall be a graduate student), appointed by the Student Government Association, for a period of one year.

(c) Except for appeals from the Student Tribunal, a majority of the Student Affairs Council shall constitute a quorum for the conducting of all business, and a majority vote of the members present is required for all decisions.

(d) Appeals from the Student Tribunal. A subgroup of eleven (11) members of the Student Affairs Council, four (4) of whom shall be students, shall hear appeals from the Student Tribunal or an Academic Review Board. The Vice Chancellor for Student Affairs or his/her designee shall serve as the chairperson of the subgroup and shall select the ten (10) other members of the subgroup from the general membership of the Student Affairs Council.

The Student Affairs Council will hear appeals on the record, unless it elects by a majority vote of members present to hear the case de novo.

1720-04-03-.12 APPEAL AND SCOPE OF REVIEW.

(1) Appeal. The disciplinary action of any board may be appealed to the next higher board.

(a) In all cases the request for appeal must be submitted in writing to the Office of Student Judicial Affairs within seven (7) calendar days of written notice of the board decision. If the seventh day falls on a weekend or holiday, the time is extended to the next regular workday.

(b) If written briefs are submitted or if required by the appellate board's bylaws, they must be submitted within fourteen (14) calendar days of submission of the request for appeal. Under normal circumstances appeals will be heard within seven (7) days after written briefs have been submitted.

(c) All appeals (except those to the Student Affairs Council, which may elect to hear the case de novo) must be taken upon the record made before the original board.

(d) Pending the outcome of an appeal, the penalty specified in the original decision shall not be imposed.

(2) Scope of Review. The appellate board will review the request for appeal together with any written briefs or other supporting documents to determine if the appeal presents a substantial question within the scope of review. The scope of review shall be limited to the following:

(a) Appropriateness of the Penalty. In cases appealing the appropriateness of the penalty, the appeal board shall uphold the penalty unless the penalty is shown to be clearly unreasonable (i.e., that which has been clearly and fully proven to have no sound basis or justification in reason).

(b) New Evidence. In cases appealed on grounds of new evidence, the moving party must show that such evidence is material to the decision of the board on the issue of innocence or guilt, and that said evidence could not have been discovered by due diligence prior to the original hearing.

(c) Due Process. In cases appealed on the grounds of denial of due process, the moving party must show that the adjudicatory process of the initial hearing was not conducted in conformity with properly prescribed procedures. The moving party must also show that the alleged discrepancy was materially adverse to the moving party's interest. Nothing contained in the foregoing shall be construed as limiting the right of the Dean of Students to request the Student Affairs Council to review the decision of any judicial board.

(3) 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 a University disciplinary board to the next higher board. The appellate board will review the request for appeal together with any written briefs or other supporting documents to determine if the appeal presents a substantial question within the scope of review. The scope of review shall be limited to the following:

(a) Appropriateness of the Penalty. In cases appealing the appropriateness of the penalty, the appeal board shall uphold the penalty unless the penalty is shown to be clearly unreasonable (i.e., that which has been clearly and fully proven to have no sound basis or justification in reason).

(b) New Evidence. An alleged victim may appeal a decision by showing that there is new evidence material to the decision of the board on the issue of innocence or guilt, and that the evidence could not have been discovered by the exercise of due diligence prior to the original disciplinary hearing.

(4) The decision of any board or administrative officer of the University of Tennessee, Knoxville is subject to review by the Chancellor and the President pursuant to the University of Tennessee Bylaws, Article V, Section 7.

1720-04-03-.13 INSPECTION AND SEARCH POLICY.

(1) Entry by University authorities 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 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 a danger to person, property, or the building itself.

(a) Inspection: Scheduled inspections by on-campus authorities with the exception of daily janitorial operations shall be preceded, if possible, by twenty-four 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.

(b) Search: On-campus authorities will not enter a room for purposes of search without permission from the resident(s) or prior permission from the Dean of Students, the Vice Chancellor for Student Affairs, or a designee of Dean of Students or Vice Chancellor for Student Affairs, unless in compliance with federal or state law.

(c) Procedure for Search in Residence Hall Rooms: A request for permission to search may be made by the Hall Director, Assistant Hall Director, or their superiors when reasonable cause exists to suspect that a violation is occurring or has occurred. If permission to search is verbally authorized,

it must be verified in writing to the occupant(s) of the facility searched by the hall staff members requesting the search. A copy of the authorization form is presented to the occupant(s) or left in the room if the occupant(s) is absent. The authorization form shall contain the following:

1. Description of the place to be searched;

2. Name of the person authorizing the search;

3. Description of the item(s) sought; and

4. Name of the person requesting the search authorization.

(d) Procedure for Search in Fraternity Houses: For purposes of search, the fraternity house will be divided into open and closed areas. The closed areas will be the dorm section and chapter room. University authorities may enter the open areas for purpose of inspection or search without permission, but there will be no search of personal belongings or closed areas of the house. University authorities will not enter the closed areas without the written permission of the Dean of Students, the Vice Chancellor for Student Affairs, or their designees, or in compliance with federal or state laws.

(e) Resident Complaint: Should a resident believe that a University staff member has misused or abused his/her authority to inspect his/her room, the resident should file a complaint. He/she may prepare a written statement for review by the Office of Student Judicial Affairs. Or, if he/she prefers, the resident may state his/her complaint to an Area Coordinator or to a staff member of the Office of Student Judicial Affairs. The complaint will then be investigated, appropriate action will be taken, and the student will be informed in writing of the results of the investigation.

1720-04-03-.14 ADMINISTRATIVE PROCEDURES.

(1) Residence Hall Regulations. Initially, violations of residence hall regulations will be handled by the Hall Director of the appropriate residence hall. Based upon the nature of the alleged violations and the past conduct of the accused, the Hall Director shall determine if the Hall Director Option is appropriate or refer the case to the Office of Student Judicial Affairs. If the Hall Director Option is deemed appropriate, it will be administered as follows:

(a) The accused student will be notified;

1. That he/she is suspected of an alleged violation;

2. Of circumstances of the violation;

3. Of his/her rights under the judicial system;

4. Of his/her rights to have his/her case heard by a student disciplinary board;

5. That the Hall Director Option does not include imposition of a penalty; and

6. That acceptance of the Hall Director Option constitutes an admission of guilt which may be introduced at any subsequent disciplinary hearing.

(b) If the student accepts the Hall Director Option he/she shall reply, in writing.

1. Acknowledging his/her participation in the alleged violation;

2. Waiving his/her right to a hearing before the Student Disciplinary Board; and

3. Waiving a right to appeal the administrative decision.

(c) If the student rejects the Hall Director Option, his/her case will be forwarded to the Office of Student Judicial Affairs for action in accordance with violations of Standards of Conduct.

(2) Standards of Conduct. When allegations of individual misconduct are referred to the Office of Student Judicial Affairs, the case will be adjudicated in accordance with procedures governing alleged violations of Standards of Conduct.

1720-04-03-.15 EMERGENCY POWERS. When, in the judgment of the Student Affairs Council of the University of Tennessee, conditions are such that it is impractical for the Student Disciplinary Boards to function, the Vice Chancellor for Student Affairs may suspend these procedural regulations and appoint an ad hoc committee to hear disciplinary matters. Any such ad hoc committee shall follow procedures that will insure the protection of the rights of the students involved, as stated herein. Any decisions by the ad hoc committee may be appealed to the Student Affairs Council.

1720-04-03-.16 TERMINATION OF STUDENT EMPLOYEES.

(1) General:

(a) The provisions of this policy statement apply to all student employees except those on college work-study (sec policy statement on termination of financial assistance.)

(b) The purpose of this statement is to provide procedures for the termination of student employees.

(2) Definitions:

(a) Student Employee. An employee who is classified as a "student employee" by the payroll section of the Office of the Treasurer, University of Tennessee.

(b) Contract Employee. A student employee who has a written contract with the University providing employment for a specified period of time.

(c) Non-Contract Employees. All students not employed for a specified period of time, their employment being terminable at the will of either party irrespective of the quality of the performance of the other party.

(d) Gross Misconduct. Theft or dishonesty, gross insubordination, destruction of University property, falsification of records, acts of moral turpitude, reporting to duty under the influence of intoxicants, using or selling illicit drugs on University premises, disorderly conduct, provoking a fight, and such other similar acts involving intolerable behavior by the employee.

(e) Grounds for Termination of Contract Employees. Contract employees may be terminated during the term of their employment for gross misconduct or inadequate job performance.

(3) Notice:

(a) Non-Contract Employees. Whenever, in the opinion of the supervisor, a non-contract employee should be terminated, he/she shall be notified in writing setting forth the date of termination. If the reason for termination involves gross misconduct, the supervisor will, prior to termination, consult with the Vice Chancellor having administrative responsibility for the employee.

(b) Contract Employees. Whenever a supervisor is of the opinion that a contract employee should be terminated, he/she shall notify the

appropriate Vice Chancellor. The Vice Chancellor shall notify the employee in writing of the reasons for his/her immediate termination or suspension, as appropriate, and of his/her right to request a hearing in accordance with the Administrative Procedures Act (T.C.A. § 4-507, *et seq.*) or as hereinafter provided.

(4) Request for a Hearing:

(a) Contract Employee. The request of the employee together with his/her election of an Administrative Procedures Act hearing or one under this policy statement shall be forwarded in writing within five working days to the Vice Chancellor having administrative responsibility for the employee.

1. If the employee elects a hearing under the provisions of the Administrative Procedures Act, the Vice Chancellor shall forward the file to the Chancellor for the appointment of a hearing officer.

2. If the employee elects a hearing under this policy statement, the Vice Chancellor shall immediately thereafter establish a three member hearing committee.

(b) Non-Contract Employees. Non-contract employees may appeal their termination through the appropriate Dean/Director and Vice Chancellor to the Chancellor. No right to a hearing accompanies this right of appeal.

(5) Responsibility of the Hearing Committee: It shall be the responsibility of the hearing committee to:

(a) Conduct a hearing within ten working days of the employee's request for said hearing;

(b) Make findings of fact and recommendations to the appropriate Vice Chancellor;

(c) Notify the employee within five working days after the hearing of the committee's findings and recommendations;

(d) Prepare and forward as soon as it is practicable a written report of the hearing to the appropriate Vice Chancellor.

(6) Hearing Procedures: Employees who are entitled to a hearing as provided above are entitled to the following procedural rights:

(a) A written account of the alleged misconduct or grounds for inadequate work performance;

(b) Reasonable notice of the time and place of the requested hearing;

(c) The assistance of a representative of his/her choice; if the employee requesting a hearing desires to be represented by an attorney, the appropriate Vice Chancellor must be notified by the employee at least three days prior to the scheduled hearing;

(d) To present all pertinent evidence including witnesses;

(e) To confront and cross-examine all adverse witnesses.

(7) Decision and Appeal:

(a) Hearing Committee. The appropriate Vice Chancellor shall within five working days after receipt of findings and recommendations of the hearing committee notify the employee in writing of his/her decision and of the employee's right to appeal as provided by Article 5, Section 7 of the University By-Laws. An employee's appeal must be submitted in writing to the Chancellor within ten business days after receipt of the decision.

(b) Administrative Procedures Act. The decision of the Chancellor is final in all cases heard under the contested case provision of the Administrative Procedures Act. Further appeal shall be in accordance with the provisions of that act.

1720-04-03-.17 TERMINATION OF FINANCIAL ASSISTANCE.

(1) General:

(a) Coverage: The provisions of this policy apply to student financial assistance except graduate assistantships and fellowships.

(b) Purpose: The purpose this policy is to provide procedures for the termination of financial assistance.

(2) Definitions:

(a) Athletic Grant-in-aid: A contract for financial assistance which has been approved by the Advisory Committee on Student Financial Aid and awarded in accordance with the provisions of the Constitution and By-Laws of the Southeastern Conference and the National Collegiate Athletic

Association.

(b) Financial Aid: Assistance awarded to a student in one of the following categories: college work-study, scholarships (including graduate), loans, and grants.

(3) Notice:

(a) Athletic Grant-in-Aid.

1. Whenever the Athletic Department proposes that the financial assistance be terminated within the contract period, the student shall be notified in writing by the Director of Financial Aid of the proposed termination. The notice shall contain the reasons for termination, the student's right to a hearing in accordance with the contested case provision of the Administrative Procedures Act or in accordance with the provisions hereinafter provided.

2. Whenever athletic financial aid is not to be renewed at the end of the contract period, the student shall be notified of his/her right to a hearing, in accordance with the requirements of the Constitution of the National Collegiate Athletic Association, before the Financial Aid Hearing Committee.

(b) Financial Aid. Whenever financial aid is to be modified or terminated, the student shall be notified of the reasons for the proposed modification or termination and of the right to appeal by contacting the Director of Financial Aid. If the Director of Financial Aid is unable to amiably resolve the student's appeal, it shall proceed as follows:

1. If the appeal concerns interpretation of policy, the student shall be afforded the right of further appeal through the Dean of Admissions and Records and the Vice Chancellor for Academic Affairs to the Chancellor.

2. If the appeal concerns a disputed question of fact, the student shall be advised of the right to a hearing before the Financial Aid Hearing Committee or in accordance with the Administrative Procedures Act.

(4) Request for a Hearing: The request for a hearing together with his/her election of an Administrative Procedures hearing or one under this policy shall be made in writing to the Director of Financial Aid within five (5) calendar days of receipt of the notice of proposed termination.

(a) If the student elects a hearing under the provision of the Administrative Procedures Act, the Director of Financial Aid shall forward the file to the Provost for the appointment of a hearing officer.

(b) If the student elects a hearing under this policy statement, the Director of Financial Aid shall immediately forward the request for a hearing together with a copy of the complete file to the Chairperson of the Advisory Committee on Student Financial Aid.

(5) Hearing Committee. At the beginning of each semester, the Chairperson of the advisory committee on Student Financial Aid shall appoint a hearing subcommittee of not less than three (3) persons who shall be charged with the responsibility of hearing all appeals during that semester.

(6) Responsibility of the Hearing Committee: It shall be the responsibility of the hearing committee to:

(a) Conduct a hearing within ten working days of the student's request for said hearing. When the University is not in session, the hearing shall be held as soon as reasonably possible.

(b) Make findings of fact and a determination as to the termination of financial aid.

(c) Notify the student as soon as possible of the committee's decision.

(d) Notify the student of his/her right to appeal, as indicated below.

(7) Hearing Procedures: Students who are entitled to a hearing as above provided are entitled to the following procedural rights:

(a) A written notice of the alleged grounds for termination of financial assistance.

(b) To reasonable notice of the time and place of the requested hearing.

(c) The assistance of a representative of his/her choice. If the student requesting a hearing desires to be represented by an attorney, the University must be notified by the student at least three days prior to the scheduled hearing.

(d) To confront and cross-examine all adverse witnesses.

(8) Appeal:

(a) Hearing Committee Decision. The student may appeal the decision of the hearing committee in accordance with Article V, Section 7 of the University By-Laws. An appeal must be submitted in writing to the Chancellor within five (5) business days.

(b) Administrative Procedures Act. The decision of the Chancellor is final in all cases heard under the contested case provision of the Administrative Procedures Act. Further appeal shall be in accordance with the provisions of that act.

* 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 Julius Johnson	x				
Commissioner Candice McQueen				x	
Dr. Joe DiPietro	x				
Dr. Russ Deaton (non-voting)					
Charles C. Anderson, Jr.	x				
Jalen Blue	x				
Shannon Brown	x				
George E. Cates	x				
Dr. Brian Donavant (non-voting)					
Spruell Driver, Jr.	x				
Dr. William E. Evans				x	
John N. Foy	x				
Crawford Gallimore				x	
Dr. David Golden	x				
Vicky B. Gregg				x	
Raja J. Jubran	x				
Brad A. Lampley	x				
James L. Murphy, III	x				
Sharon J. Miller Pryse	x				
Miranda N. Rutan (non-voting)					
Rhedona Rose	x				
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: 07/16/2015

Signature:

Name of Officer: Matthew Scoggins

Title of Officer: Deputy General Counsel

Subscribed and sworn to before me on: 7-16-15

Notary Public Signature: Lynette Russell

My commission expires on: 12-4-18

LYNETTE RUSSELL NOTARY PUBLIC STATE OF TENNESSEE ANN COUNTY

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

Herbert H. Slatery III
Attorney General and Reporter
8/5/2015
Date

Department of State Use Only

Filed with the Department of State on: 8/12/15
Effective for: 180 *days
Effective through: 2/8/16

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

Tre Hargett
Secretary of State

RECEIVED
2015 AUG 12 PM 1:23
SECRETARY OF STATE
PUBLICATIONS

G.O.C. STAFF RULE ABSTRACT

BOARD**:**	University of Tennessee Board of Trustees
CAMPUS:	Health Science Center
SUBJECT:	Student Rights and Responsibilities
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 49-9-209(e)
EFFECTIVE DATES:	August 27, 2015 through February 23, 2016
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	The emergency rule changes rules for the Health Science Center concerning student conduct involving sexual misconduct, domestic violence, dating violence, and stalking. According to the Board, the changes were necessary to comply with Title IX and the Clery Act, as amended by the Violence Against Women Reauthorization Act. Specifically, the emergency rule adds definitions, clarifies some existing definitions including the definition for "weapon" and the description of "disorderly conduct", and clarifies the University's investigative responsibilities and the rights of the complainant and respondent.

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)

The University of Tennessee anticipates that this rule change will have minimal to no impact on local governments.

Department of State
Division of Publications
312 Rosa L. Parks, 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: 08-30-15
Rule ID(s): 6007
File Date (effective date): 8/27/15
End Effective Date: 2/23/16

Emergency Rule Filing Form

Emergency rules are effective from date of filing for a period of up to 180 days.

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

Rule Type:
x Emergency Rule

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

Statement of Necessity:
The need for this rule relates to the University of Tennessee's need to comply with Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. § 1681, and the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act), 20 U.S.C. § 1092f. From April 2011 through April 2014, the United States Department of Education's Office for Civil Rights (OCR) issued multiple guidance documents concerning the obligations of colleges and universities under Title IX to investigate and respond to reports of student-on-student sexual violence. In 2013, Congress passed and the President signed the Violence Against Women Reauthorization Act (VAWA). VAWA amended the Clery Act and imposed new obligations on universities relating to sexual assault, domestic violence, dating violence, and stalking. On July 1, 2015, regulations implementing VAWA will take effect. During the 2014-2015 academic year, in response to OCR's Title IX guidance and VAWA, all University of Tennessee (UT) campuses implemented interim policies on sexual misconduct, domestic violence, dating violence, and stalking. While the interim policies were in effect, the campuses sought and received input on the policies from students, faculty, and staff. In Fall 2015, all campuses will issue final policies on sexual misconduct, domestic violence, dating violence, and stalking. All campuses have proposed revisions to their student conduct rules that make those rules compliant with Title IX and the Clery Act (as amended by VAWA) and consistent with the standards of conduct, definitions, rights, and procedures outlined in their policies on sexual misconduct, domestic violence, dating violence, and stalking.

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/RuleTitle per row)

Chapter Number	**Chapter Title**
1720-03-03	Student Rights and Responsibilities
Rule Number	**Rule Title**
1720-03-03-.02	Definitions
1720-03-03-.04	Standards of Conduct
1720-03-03-.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.

(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 ~~and replica~~), 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 ~~three~~ four (~~3~~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.~~delivered by regular mail, courier service, or hand delivery to the address the University has on file for the student or student organization, or by e-mail to the student's or student organization's University-provided e-mail account.~~

(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.

720-03-03-.04 STANDARDS OF CONDUCT. A student or student organization may be isciplined 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 ~~(including electronically)~~ 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~~, although the speaker need not mean to carry out the act of unlawful violence in order to constitute a violation of this rule~~.

(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. ~~Sexual assault or misconduct. "Sexual assault" is defined as any sexual act or attempt to engage in any sexual act with another person without the consent of the other person, or in circumstances in which the person is unable to give consent due to age, disability, or an alcohol/chemical or other impairment. "Sexual misconduct" is defined as any intimate touching of another person, or forcing a person to engage in intimate touching of another, without the consent of the other person, or in circumstances in which the person is unable to give consent due to age, disability, or an alcohol/chemical or other impairment. It is the responsibility of the person initiating sexual activity to ensure the other person is capable of consenting to that activity. Consent is given by an affirmative verbal response or acts that are unmistakable in their meaning. Consent to one form of sexual activity does not mean consent is given to another type of sexual activity.~~

(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.

~~(12)~~(13) Engaging in ~~disorderly,~~ lewd, indecent, or obscene conduct. ~~"Disorderly" conduct means fighting or other physically violent or 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.~~ "Lewd, indecent, or obscene" conduct includes, but is not limited to, public exposure of one's sexual organs, public urinating, and public sexual acts.

~~(13)~~(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.

~~(14)~~(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.

~~(15)~~(16) Possessing, using, or duplicating University keys, access cards, or identification cards without authorization; possessing, using, or entering University-controlled property without authorization.

~~(16)~~(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.

~~(17)~~(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.

~~(18)~~(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.

~~(19)~~(20) Consuming, manufacturing, possessing, distributing, dispensing, selling, or being under the influence of alcoholic beverages, if prohibited by federal, state, or local law.

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

~~(21)~~(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.

~~(22)~~(23) Failing to pay a University bill, account, or other University financial obligation.

~~(23)~~(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.

~~(24)~~(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.

~~(25)~~(26) Violating the terms of an interim suspension, a no-contact directive, or a disciplinary penalty imposed by the University.

~~(26)~~(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.

~~(27)~~(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.

~~(28)~~(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.

~~(29)~~(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 DIRECTIVE. In cases involving allegations of assault, injury, sexual abuse, harassment, or in cases where there is reason to believe continued contact

between a student/student organization and specific persons, including complainants and witnesses, may interfere with those persons' security, safety or ability to participate effectively in work or studies, the Chief Student Affairs Officer, or his/her designee, may require that the student/student organization not have verbal, physical, or written contact with specific persons for a definite or indefinite period of time. The student/student organization will receive notice of the no contact directive. Any student, faculty or staff member or other person with a reasonable justification may request that a no contact directive be issued to a student/student organization. In addition to an internal University no contact directive, complainants are advised that other similar options exist and can be obtained from law enforcement and civil and criminal courts.

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) 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 ~~in accordance with the contested case~~ under ~~provisions~~ ~~of~~ 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 ~~T~~UAPA, a requested hearing will be conducted in accordance with the University's rules for conducting contested case proceedings under the ~~T~~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. ~~In cases involving a complaint of sexual assault or misconduct, the alleged victim shall have the right to:~~

~~1. Notice concerning the process by which the University will handle the complaint and an opportunity to ask questions about the process;~~

~~2. A prompt, thorough, and impartial investigation of the complaint;~~

~~3. The same opportunity as the accused student to present his/her explanation of the facts during the University's investigation;~~

~~4. Have the investigation of the complaint concluded within sixty (60) days of the University's receipt of a complaint, unless circumstances make it impracticable for the University to complete its investigation within that timeframe;~~

~~5. Notice of the outcome of the University's investigation;~~

~~6. Have a disciplinary hearing conducted within thirty (30) days of a University charge that the accused student committed sexual assault or misconduct, unless circumstances make it impracticable for the University to conduct a hearing within that timeframe;~~

~~7. Notice of the date, time, and location of the disciplinary hearing, the right to have the disciplinary hearing closed to the public, and the right to request rescheduling of the hearing for good cause;~~

~~8. The same access as the accused student to any information or documents that will be used by the University during a disciplinary hearing, unless prohibited by law;~~

~~9. Challenge the selection of any member of a hearing panel or a hearing examiner for good cause, which will be determined at the discretion of the Chancellor or his/her designee;~~

~~10. Be accompanied by an advisor of his/her choosing during the University's investigation or a disciplinary hearing, but the advisor shall not be permitted to speak for the victim during a disciplinary hearing;~~

~~11. The same opportunity as the accused student to be present during the hearing, present witnesses and other evidence, challenge the admissibility of evidence, and cross-examine adverse witnesses during the disciplinary hearing;~~

~~12. Testify or remain silent at his/her option; however, choosing to remain silent may result in the University dismissing the charges against the accused student or the hearing panel or examiner finding that there is insufficient evidence to find the accused student guilty of the charges against him/her;~~

~~13. Not to be questioned personally by the accused student during the disciplinary hearing;~~

~~14. Submit a written impact statement to the hearing panel or examiner for consideration during the sanctioning phase of the disciplinary hearing, if the accused student is found guilty of the charges against him/her;~~

~~15. Notice of the decision of the hearing panel or examiner within three (3) business days of the disciplinary hearing; and~~

~~16. Appeal the decision of the hearing panel or examiner to the Chancellor and the President.~~

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

(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 Julius Johnson	x				
Commissioner Candice McQueen				x	
Dr. Joe DiPietro	x				
Dr. Russ Deaton (non-voting)					
Charles C. Anderson, Jr.	x				
Jalen Blue	x				
Shannon Brown	x				
George E. Cates	x				
Dr. Brian Donavant (non-voting)					
Spruell Driver, Jr.	x				
Dr. William E. Evans				x	
John N. Foy	x				
Crawford Gallimore				x	
Dr. David Golden	x				
Vicky B. Gregg	x				
Raja J. Jubran	x				
Brad A. Lampley	x				
James L. Murphy, III	x				
Sharon J. Miller Pryse	x				
Miranda N. Rutan (non-voting)					
Rhedona Rose	x				
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: 08/14/2015

Signature: [signature]

Name of Officer: Matthew Scoggins

Title of Officer: Deputy General Counsel

Subscribed and sworn to before me on: 8-14-15

Notary Public Signature: Lynette Russell

My commission expires on: 12-4-18

LYNETTE RUSSELL NOTARY PUBLIC STATE OF TENNESSEE KNOX COUNTY

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

Herbert H. Slatery III
Attorney General and Reporter
8/20/2015
Date

Department of State Use Only

Filed with the Department of State on: 8/27/15
Effective for: 180 *days
Effective through: 2/23/16

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

Tre Hargett
Secretary of State

RECEIVED
2015 AUG 27 PM 3:34
SECRETARY OF STATE
PUBLICATIONS

G.O.C. STAFF RULE ABSTRACT

BOARD**:**	University of Tennessee Board of Trustees
CAMPUS:	Martin
SUBJECT:	Student Rights and Responsibilities
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 49-9-209(e)
EFFECTIVE DATES:	August 27, 2015 through February 23, 2016
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	The emergency rule changes rules for the Martin campus concerning student conduct involving sexual misconduct, domestic violence, dating violence, and stalking. According to the Board, the changes were necessary to comply with Title IX and the Clery Act, as amended by the Violence Against Women Reauthorization Act. Specifically, the emergency rule adds definitions, clarifies some existing definitions including the definition for "weapon" and the description of "disorderly conduct", and clarifies the University's investigative responsibilities and the rights of the complainant and respondent.

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)

The University of Tennessee anticipates that this rule change will have minimal to no impact on local governments.

Department of State
Division of Publications
312 Rosa L. Pa[illegible]Floor Snodgrass/TN Tower
Nashville, TN 37243
Phone: 615-741-2650
Email: publications.information@tn.gov

For Department of State Use Only

Sequence Number: 08-31-15
Rule ID(s): 6008
File Date (effective date): 8/27/15
End Effective Date: 2/23/16

Emergency Rule Filing Form

Emergency rules are effective from date of filing for a period of up to 180 days.

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

Rule Type:
x Emergency Rule

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

Statement of Necessity:
The need for this rule relates to the University of Tennessee's need to comply with Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. § 1681, and the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act), 20 U.S.C. § 1092f. From April 2011 through April 2014, the United States Department of Education's Office for Civil Rights (OCR) issued multiple guidance documents concerning the obligations of colleges and universities under Title IX to investigate and respond to reports of student-on-student sexual violence. In 2013, Congress passed and the President signed the Violence Against Women Reauthorization Act (VAWA). VAWA amended the Clery Act and imposed new obligations on universities relating to sexual assault, domestic violence, dating violence, and stalking. On July 1, 2015, regulations implementing VAWA will take effect. During the 2014-2015 academic year, in response to OCR's Title IX guidance and VAWA, all University of Tennessee (UT) campuses implemented interim policies on sexual misconduct, domestic violence, dating violence, and stalking. While the interim policies were in effect, the campuses sought and received input on the policies from students, faculty, and staff. In Fall 2015, all campuses will issue final policies on sexual misconduct, domestic violence, dating violence, and stalking. All campuses have proposed revisions to their student conduct rules that make those rules compliant with Title IX and the Clery Act (as amended by VAWA) and consistent with the standards of conduct, definitions, rights, and procedures outlined in their policies on sexual misconduct, domestic violence, dating violence, and stalking.

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/RuleTitle per row)

Chapter Number	**Chapter Title**
1720-05-01	Student Rights and Responsibilities
Rule Number	**Rule Title**
1720-05-01-.02	Definitions
1720-05-01-.04	Standards of Conduct
1720-05-01-.08	Hearing Procedures

RULES
OF
THE UNIVERSITY OF TENNESSEE
(MARTIN)

CHAPTER 1720-05-01
STUDENT RIGHTS AND RESPONSIBILITIES

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~~and replica~~), 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 ~~three~~ four (~~4~~3) 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.~~delivered by regular mail, courier service, or hand delivery to the address the University has on file for the student or student organization, or by e-mail to the student's or student organization's University-provided e-mail account.~~

(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.

1720-05-01-.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 ~~(including electronically)~~ 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~~, although the speaker need not mean to carry out the act of unlawful violence in order to constitute a violation of this rule~~.

(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. ~~Sexual assault or misconduct. "Sexual assault" is defined as any sexual act or attempt to engage in any sexual act with another person without the consent of the other person, or in circumstances in which the person is unable to give consent due to age, disability, or an alcohol/chemical or other impairment. "Sexual misconduct" is defined as any intimate touching of another person, or forcing a person to engage in intimate touching of another, without the consent of the other person, or in circumstances in which the person is unable to give consent due to age, disability, or an alcohol/chemical or other impairment. It is the responsibility of the person initiating sexual activity to ensure the other person is capable of consenting to that activity. Consent is given by an affirmative verbal response or acts that are unmistakable in their meaning. Consent to one form of sexual activity does not mean consent is given to another type of sexual activity.~~

(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.

~~(12)~~(13) Engaging in ~~disorderly,~~ lewd, indecent, or obscene conduct. ~~"Disorderly" conduct means fighting or other physically violent or 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.~~ "Lewd, indecent, or obscene" conduct includes, but is not limited to, public exposure of one's sexual organs, public urinating, and public sexual acts.

~~(13)~~(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.

~~(14)~~(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.

~~(15)~~(16) Possessing, using, or duplicating University keys, access cards, or identification cards without authorization; possessing, using, or entering University-controlled property without authorization.

~~(16)~~(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.

~~(17)~~(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.

~~(18)~~(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.

~~(19)~~(20) Consuming, manufacturing, possessing, distributing, dispensing, selling, or being under the influence of alcoholic beverages, if prohibited by federal, state, or local law.

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

~~(21)~~(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.

~~(22)~~(23) Failing to pay a University bill, account, or other University financial obligation.

~~(23)~~(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.

~~(24)~~(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.

~~(25)~~(26) Violating the terms of an interim suspension, a no-contact directive, or a disciplinary penalty imposed by the University.

~~(26)~~(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.

~~(27)~~(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.

~~(28)~~(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.

~~(29)~~(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) 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 ~~provisions~~ proceedings under ~~of~~ the ~~Tennessee~~ Uniform Administrative Procedures Act ("~~T~~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 ~~T~~UAPA. The University's procedures for conducting contested case hearings under the ~~T~~UAPA are contained in Chapter 1720-01-05, and the University's rules concerning waivers of contested case ~~hearings~~ proceedings are contained in Chapter 1720-01-3. Disciplinary hearings will be conducted in accordance with the University's procedures for conducting contested case ~~hearings~~ proceedings under the ~~T~~UAPA unless the student waives those procedures in writing and elects to have his or her case ~~disposed of~~ resolved in accordance with ~~the University procedures established by these rules~~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 TUAPA, 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 TUAPA 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.

~~(e) In cases involving a complaint of sexual assault or misconduct, the alleged victim shall have the right to:~~

~~1. Notice concerning the process by which the University will handle the complaint and an opportunity to ask questions about the process;~~

~~2. A prompt, thorough, and impartial investigation of the complaint;~~

~~3. The same opportunity as the accused student to present his/her explanation of the facts during the University's investigation;~~

~~4. Have the investigation of the complaint concluded within sixty (60) days of the University's receipt of a complaint, unless circumstances make it impracticable for the University to complete its investigation within that timeframe;~~

~~5. Notice of the outcome of the University's investigation;~~

~~6. Have a disciplinary hearing conducted by the Disciplinary Hearing Board within thirty (30) days of a University charge that the accused student committed sexual assault or misconduct, unless the accused student chooses an administrative hearing under Chapter 1720-05-01-.08(3) or the circumstances make it impracticable for the University to conduct a hearing within that timeframe;~~

~~7. Notice of the date, time, and location of the hearing before the Disciplinary Hearing Board, the right to have the hearing closed~~

~~to the public, and the right to request rescheduling of the hearing for good cause;~~

~~8. The same access as the accused student to any information or documents that will be used by the Student Conduct Officer during the hearing before the Disciplinary Hearing Board, unless prohibited by law;~~

~~9. Challenge the seating of any Disciplinary Hearing Board member for good cause, which will be determined at the discretion of the Vice Chancellor for Student Affairs;~~

~~10. Be accompanied by an advisor of his/her choosing during the University's investigation or a hearing before the Disciplinary Hearing Board, but the advisor shall not be permitted to speak for the victim during a hearing;~~

~~11. The same opportunity as the accused student to be present during a hearing before the Disciplinary Hearing Board, present witnesses and other evidence, challenge the admissibility of evidence, and cross-examine adverse witnesses during a hearing before the Disciplinary Hearing Board;~~

~~12. Testify or remain silent at his/her option; however, choosing to remain silent may result in the University dismissing the charges against the accused student or the Disciplinary Hearing Board finding that there is insufficient evidence to find the accused student guilty of the charges against him/her;~~

~~13. Not to be questioned directly by the accused student during the hearing before the Disciplinary Hearing Board;~~

~~14. Submit a written impact statement to the Disciplinary Hearing Board or Student Conduct Officer for consideration during the sanctioning phase of an administrative or disciplinary hearing, if the accused student is found guilty of the charges against him/her;~~

~~15. Notice of the decision of the Student Conduct Officer or Disciplinary Hearing Board within three (3) business days of an administrative or disciplinary hearing; and~~

~~16. Appeal the decision of the Student Conduct Officer, following an administrative hearing, or the Disciplinary Hearing Board to the Vice Chancellor for Student Development.~~

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

1720-05-01-.09 APPEALS.

(1) Appeal. A decision of the Disciplinary Hearing Board, or a decision of the Student Conduct Officer concerning a penalty following an administrative hearing, may be appealed to the Vice Chancellor for Student Affairs.

(a) The request for appeal shall be submitted in writing to the Vice Chancellor for Student Affairs within seven (7) calendar days of written notice of the decision of the Disciplinary Hearing Board or Student Conduct Officer. If the seventh day falls on a weekend or holiday, the time is extended to the next regular workday.

(b) The request for appeal shall contain:

1. A statement that the student or student organization appeals the decision of the Disciplinary Hearing Board or Student Conduct Officer; and

2. A brief statement of the grounds for the appeal.

(c) All appeals to the Vice Chancellor for Student Affairs are written and heard based upon the record made before the Disciplinary Hearing Board.

(d) Pending the outcome of an appeal, the penalty specified in the decision of the Disciplinary Hearing Board shall not be imposed.

(2) The Vice Chancellor for Student Affairs may:

(a) Affirm the decision of the Disciplinary Hearing Board or Student Conduct Officer;

(b) Amend the decision of the Disciplinary Hearing Board or Student Conduct Officer;

(c) Return the case to the Disciplinary Hearing Board or Student Conduct Officer with instructions for reconsideration of the case; or

(d) Overturn the decision of the Disciplinary Hearing Board.

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

1720-05-01-.10 EMERGENCY POWERS. When, in the judgment of the Chancellor of The University of Tennessee at Martin, conditions are such that an emergency exists which makes it impossible for the system of judicial boards to function, he/she may suspend these procedural regulations. If the procedures are suspended, he/she may substitute for them arrangements for handling disciplinary matters that will insure the orderly functioning of the University and at the same time safeguard the basic rights of the students and student organizations.

1720-05-01-.11 INVOLUNTARY MEDICAL WITHDRAWAL OR SUSPENSION.

(1) When a student is unable to effectively pursue his/her academic work, or when his/her behavior is disruptive to the normal educational processes of the University, or constitutes a threat to members of the University community, due to, among other things, alcohol use, drug use, or a physical or mental incapacitating condition, he/she may be withdrawn or temporarily suspended from the University as hereinafter provided.

(1) Withdrawal. A student may be withdrawn from the University only after an evaluation of his/her mental and physical condition by a panel of at least three (3) persons appointed by the Vice Chancellor for Student Affairs. The student shall be notified of the reasons for the evaluation and given an opportunity to present evidence to the committee. The committee's findings and recommendations shall be forwarded to the Vice Chancellor for Student Affairs, who will notify the student in writing of his/her decision.

(2) Temporary Suspension. Whenever a student, because of his/her mental or physical condition constitutes a danger to persons or property, or when his/her behavior is disruptive to the normal educational processes of the University, he/she may be suspended from the University, for a reasonable period of time, by the Vice Chancellor for Student Affairs. If the University does not withdraw the student in accordance with procedures outlined above, he/she may return to the University at the end of the suspension period.

(3) Grades. When a student is withdrawn or temporarily suspended from the University, he/she may be assigned a grade of "W" or "I," whichever is deemed appropriate by the faculty member involved.

(4) Readmission.

(a) A student who is involuntarily withdrawn under this rule may not be

readmitted to the University before the start of the next semester or without the approval of the Vice Chancellor for Student Affairs. The student shall also meet all of the admission requirements of the University and of the school or college in which he/she wishes to be readmitted.

(b) A student shall submit a written request for permission to reapply to the University with the Vice Chancellor for Student Affairs by October 1 for Spring enrollment, by February 1 for Summer enrollment, and by May 1 for Fall enrollment. The student's written request shall include an explanation of why the Vice Chancellor for Student Affairs should allow the student to reapply and an explanation of the student's plan to transition successfully back into the academic community.

(c) The Vice Chancellor for Student Affairs may require the student to provide the panel of individuals who recommended that the student be involuntarily withdrawn with proof that the condition that caused the withdrawal is no longer present or that the condition is under control through treatment such that the student does not present a direct threat to the health or safety of him/herself or others and will not disrupt the normal educational processes of the University. Proof may consist of a current medical or mental health evaluation, demonstration of ongoing medical or mental health treatment, and a plan for treatment upon readmission. The panel may request any other information or documentation that it deems necessary. In exceptional circumstances, the panel may request a second, independent opinion of a qualified medical or mental health professional paid for by the University. In cases where the Vice Chancellor for Student Affairs has imposed other conditions for readmission, it is the responsibility of the student to provide documentation of compliance with those conditions.

(d) The panel's recommendation concerning reenrollment or readmission shall be provided to the Vice Chancellor for Student Affairs, who will notify the student in writing of his/her decision. The decision of the Vice Chancellor for Student Affairs is final and may not be appealed.

1720-05-01-.12 INSPECTION AND SEARCH POLICIES.

(1) Entry by University authorities into occupied rooms in residence halls will be divided into three (3) categories; inspection, search, and emergency. Inspection is defined as the entry into an occupied room by University authorities in order to ascertain the health and safety conditions in the room, to check the physical condition of the room, to make repairs on facilities, or to perform cleaning and janitorial operations. Search is defined as the entry into an occupied room by on-campus authorities for the purpose of investigating suspected violations of campus regulations. An emergency situation exists when the delay necessary to obtain a search authorization constitutes an apparent danger to person, property,

or the building itself.

(2) Inspection: Scheduled inspections by on-campus authorities with the exception of daily janitorial operations shall be preceded, if possible, by twenty-four (24) hours' notice to the residents. During the inspection there will be no search of drawers, closets, or personal belongings. This policy is applicable for residence halls and fraternity houses.

(3) Search: On-campus authorities will not enter a room for purposes of search without the permission of the resident unless they have a campus authorization to search, authorized by the Vice Chancellor for Student Affairs or his/her designee, which specifies the reasons for the search and the objects or information sought, or unless they enter in compliance with federal or state law. If possible, the student should be present during the search. Normally these searches will not be made unless the Vice Chancellor for Student Affairs or his/her designee is present.

(4) If the search reveals objects the possession of which violates a law or a University rule, the University may take appropriate disciplinary action even though the objects were not listed on the search authorization.

1720-05-01-.13 ACADEMIC DISHONESTY. The University of Tennessee at Martin has chosen as its primary objective quality undergraduate education. Commitment to this objective must include an obligation by all members of the University community to promote and protect the highest standards of integrity in study, research, instruction and evaluation. Dishonesty or unethical behavior does not belong at an institution dedicated to the promotion of knowledge and learning. Integrity of the academic process requires fair and impartial evaluation by faculty and honest academic conduct by students. A student may be found to have violated this obligation if he/she:

(1) Refers during an academic evaluation to materials, sources, or devices not authorized by the instructor;

(2) Provides assistance during an academic evaluation or assignment to another person in a manner not authorized by the instructor;

(3) Receives assistance during an academic evaluation or assignment from another person in a manner not authorized by the instructor;

(4) Possesses, buys, sells, obtains, or uses a copy of any materials intended to be used as an instrument of academic evaluation in advance of its administration;

(5) Acts as a substitute for another person in any academic evaluation or assignment;

(6) Utilizes another person as a substitute for him/herself in any academic evaluation or assignment;

(7) Practices any form of deceit in an academic evaluation or assignment;

(8) Depends on the aid of others, in a manner expressly prohibited by the instructor, in the research, preparation, creation, writing, performing, or publication of work to be submitted for academic credit or evaluation;

(9) Provides aid to another person, knowing such aid is expressly prohibited by the instructor, in the research, preparation, creation, writing, performing, or publication of work to be submitted for academic credit or evaluation;

(10) Indulges in plagiarism by presenting as one's own, for academic evaluation or assignment, the ideas, representations, or works of another person or persons without customary and proper acknowledgment of sources;

(11) Submits the work of another person in a manner that represents the work to be one's own;

(12) Knowingly permits one's work to be submitted by another person without the instructor's authorization;

(13) Attempts deceitfully to influence or change one's academic evaluation or record; or

(14) Indulges in conduct that is so disruptive as to infringe upon the rights of an instructor or fellow students during a class or examination session.

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Governor Bill Haslam				x	
Commissioner Julius Johnson	x				
Commissioner Candice McQueen				x	
Dr. Joe DiPietro	x				
Dr. Russ Deaton (non-voting)					
Charles C. Anderson, Jr.	x				
Jalen Blue	x				
Shannon Brown	x				
George E. Cates	x				
Dr. Brian Donavant (non-voting)					
Spruell Driver, Jr.	x				
Dr. William E. Evans				x	
John N. Foy	x				
Crawford Gallimore				x	
Dr. David Golden	x				
Vicky B. Gregg	x				
Raja J. Jubran	x				
Brad A. Lampley	x				
James L. Murphy, III	x				
Sharon J. Miller Pryse	x				
Miranda N. Rutan (non-voting)					
Rhedona Rose	x				
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: 08/14/2015

Signature:

Name of Officer: Matthew Scoggins

Title of Officer: Deputy General Counsel

Subscribed and sworn to before me on: 8-14-15

Notary Public Signature: Lynette Russell

My commission expires on: 12-4-18

LYNETTE RUSSELL NOTARY PUBLIC STATE OF TENNESSEE DAVIDSON COUNTY

RDA 1693

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

6/20/2015
Date

Department of State Use Only

Filed with the Department of State on: 8/27/15

Effective for: 180 *days

Effective through: 2/23/16

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

Tre Hargett
Secretary of State

RECEIVED
2015 AUG 27 PM 3:35
SECRETARY OF STATE
PUBLICATIONS

G.O.C. STAFF RULE ABSTRACT

BOARD**:**	University of Tennessee Board of Trustees
CAMPUS:	Chattanooga
SUBJECT:	Student Rights and Responsibilities
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 49-9-209(e)
EFFECTIVE DATES:	August 27, 2015 through February 23, 2016
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	The emergency rule changes rules for the Chattanooga campus concerning student conduct involving sexual misconduct, domestic violence, dating violence, and stalking. According to the Board, the changes were necessary to comply with Title IX and the Clery Act, as amended by the Violence Against Women Reauthorization Act. Specifically, the emergency rule adds definitions, clarifies some existing definitions including the definition for "weapon" and the description of "disorderly conduct", and clarifies the University's investigative responsibilities and the rights of the complainant and respondent.

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)

The University of Tennessee anticipates that this rule change will have minimal to no impact on local governments.

Department of State
Division of Publications
312 Rosa L. Parks, 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: 08-32-15
Rule ID(s): 6009
File Date (effective date): 8/27/15
End Effective Date: 2/23/16

Emergency Rule Filing Form

Emergency rules are effective from date of filing for a period of up to 180 days.

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

Rule Type:
x Emergency Rule

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

Statement of Necessity:
The need for this rule relates to the University of Tennessee's need to comply with Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. § 1681, and the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act), 20 U.S.C. § 1092f. From April 2011 through April 2014, the United States Department of Education's Office for Civil Rights (OCR) issued multiple guidance documents concerning the obligations of colleges and universities under Title IX to investigate and respond to reports of student-on-student sexual violence. In 2013, Congress passed and the President signed the Violence Against Women Reauthorization Act (VAWA). VAWA amended the Clery Act and imposed new obligations on universities relating to sexual assault, domestic violence, dating violence, and stalking. On July 1, 2015, regulations implementing VAWA will take effect. During the 2014-2015 academic year, in response to OCR's Title IX guidance and VAWA, all University of Tennessee (UT) campuses implemented interim policies on sexual misconduct, domestic violence, dating violence, and stalking. While the interim policies were in effect, the campuses sought and received input on the policies from students, faculty, and staff. In Fall 2015, all campuses will issue final policies on sexual misconduct, domestic violence, dating violence, and stalking. All campuses have proposed revisions to their student conduct rules that make those rules compliant with Title IX and the Clery Act (as amended by VAWA) and consistent with the standards of conduct, definitions, rights, and procedures outlined in their policies on sexual misconduct, domestic violence, dating violence, and stalking.

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/RuleTitle per row)

Chapter Number	**Chapter Title**
1720-02-05	Student Code
Rule Number	**Rule Title**
1720-02-05-.02	Definitions
1720-02-05-.04	Standards of Conduct
1720-02-05-.05	Investigations of Student Conduct
1720-02-05-.06	Due Process and Student Rights

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 appear to a law enforcement officer to be real firearms~~and replica~~), 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 ~~3~~ 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.

(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.

1720-02-05-.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~~, although the speaker need not mean to carry out the act of unlawful violence in order to constitute a violation of this rule~~.

(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. ~~Sexual assault or misconduct. "Sexual assault" is defined as any sexual act or attempt to engage in any sexual act with another person without the consent of the other person, or in circumstances in which the person is unable to give consent due to age, disability, or an alcohol/chemical or other impairment. "Sexual misconduct" is defined as any intimate touching of another person, or forcing a person to engage in intimate touching of another, without the consent of the other person, or in circumstances in which the person is unable to give consent due to age, disability, or an alcohol/chemical or other impairment. It is the responsibility of the person initiating sexual activity to ensure the other person is capable of consenting to that activity. Consent is given by an affirmative verbal response or~~

~~acts that are unmistakable in their meaning. Consent to one form of sexual activity does not mean consent is given to another type of sexual activity.~~

(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" means any intentional or reckless act in this state on or off University-controlled property by one (1) student acting alone or with others that is directed against any other student, that endangers the mental or physical health or safety of that student, or that induces or coerces a student to endanger the student's 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.

~~(12)~~(13) Engaging in ~~disorderly,~~ lewd, indecent, or obscene conduct. ~~"Disorderly" conduct means fighting or other physically violent or 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.~~ "Lewd, indecent, or obscene" conduct includes, but is not limited to, public exposure of one's sexual organs, public urinating, and public sexual acts.

~~(13)~~(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.

~~(14)~~(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.

~~(15)~~(16) Possessing, using, or duplicating University keys, access cards, or identification cards without authorization; possessing, using, or entering University-controlled property without authorization.

~~(16)~~(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.

~~(17)~~(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.

~~(18)~~(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.

~~(19)~~(20) Consuming, manufacturing, possessing, distributing, dispensing, selling, or being under the influence of alcoholic beverages, if prohibited by federal, state, or local law.

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

~~(21)~~(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.

~~(22)~~(23) Failing to pay a University bill, account, or other University financial

obligation.

~~(23)~~(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.

~~(24)~~(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.

~~(25)~~(26) Violating the terms of an interim suspension, a no-contact directive, or a disciplinary penalty imposed by the University.

~~(26)~~(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.

~~(27)~~(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.

~~(28)~~(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.

~~(29)~~(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. ~~In cases of involving a complaint of sexual assault or misconduct, the alleged victim shall have the right to:~~

~~(a) notice concerning the process by which the University will handle the complaint and an opportunity to ask questions about the process;~~

~~(b) a prompt, thorough, and impartial investigation of the complaint;~~

~~(c) the same opportunity as the accused student to present his/her explanation of the facts during the University's investigation;~~

~~(d) have the investigation of the complaint concluded within sixty (60) days of the University's receipt of a complaint, unless circumstances make it impracticable for the University to complete its investigation within that timeframe;~~

~~(e) notice of the outcome of the University's investigation;~~

~~(f) have a disciplinary hearing conducted within thirty (30) days of a University charge that the accused student committed sexual assault or misconduct, unless circumstances make it impracticable for the University to conduct a hearing within that timeframe;~~

(g) notice of the date, time, and location of the disciplinary hearing, the right to have the disciplinary hearing closed to the public, and the right to request rescheduling of the hearing for good cause;

(h) the same access as the accused student to any information or documents that will be used by the University during a disciplinary hearing, unless prohibited by law;

(i) challenge the seating of any Student Conduct Board member for good cause, which will be determined at the discretion of the University Hearing Officer;

(j) be accompanied by an advisor of his/her choosing during the University's investigation or a disciplinary hearing, but the advisor shall not be permitted to speak for the victim during a disciplinary hearing;

(k) the same opportunity as the accused student to be present during the hearing, present witnesses and other evidence, challenge the admissibility of evidence, and cross-examine adverse witnesses during the disciplinary hearing;

(l) testify or remain silent at his/her option; however, choosing to remain silent may result in the University dismissing the charges against the accused student or the Student Conduct Board or University Hearing Officer finding that there is insufficient evidence to find the accused student guilty of the charges against him/her;

(m) not to be questioned personally by the accused student during the disciplinary hearing;

(n) submit a written impact statement to the Student Conduct Board or University Hearing Officer for consideration during the sanctioning phase of the disciplinary hearing, if the accused student is found guilty of the charges against him/her;

(o) notice of the decision of the Student Conduct Board or University Hearing Officer within three (3) business days of the disciplinary hearing; and

(p) appeal the decision of the Student Conduct Board or University Hearing Officer to the Vice Chancellor for Student Development.

1720-02-05-.07 STUDENT CONDUCT HEARING PROCEDURES.

(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

(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.

(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 ~~Tennessee~~ 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, ~~APA hearing procedures~~ and these 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:

(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.

(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 Julius Johnson	x				
Commissioner Candice McQueen				x	
Dr. Joe DiPietro	x				
Dr. Russ Deaton (non-voting)					
Charles C. Anderson, Jr.	x				
Jalen Blue	x				
Shannon Brown	x				
George E. Cates	x				
Dr. Brian Donavant (non-voting)					
Spruell Driver, Jr.	x				
Dr. William E. Evans				x	
John N. Foy	x				
Crawford Gallimore				x	
Dr. David Golden	x				
Vicky B. Gregg	x				
Raja J. Jubran	x				
Brad A. Lampley	x				
James L. Murphy, III	x				
Sharon J. Miller Pryse	x				
Miranda N. Rutan (non-voting)					
Rhedona Rose	x				
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: 08/14/2015

Signature: [signature]

Name of Officer: Matthew Scoggins

Title of Officer: Deputy General Counsel

Subscribed and sworn to before me on: 8-14-15

Notary Public Signature: Lynette Russell

My commission expires on: 12-4-18

LYNETTE RUSSELL NOTARY PUBLIC STATE OF TENNESSEE KNOX COUNTY

SS-7040 (November 2014)

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

Herbert H. Slatery III
Attorney General and Reporter
8/20/2015
Date

Department of State Use Only

Filed with the Department of State on: 8/27/15
Effective for: 180 *days
Effective through: 2/23/16

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

Tre Hargett
Secretary of State

RECEIVED
2015 AUG 27 PM 3:33
SECRETARY OF STATE
PUBLICATIONS

G.O.C. STAFF RULE ABSTRACT

BOARD**:**	Tennessee Board of Regents
SUBJECT:	Systemwide Rules for Student Conduct and Disciplinary Sanctions
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 49-8-203(a)(1)(D)
EFFECTIVE DATES:	August 18, 2015 through February 14, 2016
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	The emergency rule changes rules for the Board of Regents institutions concerning threatening or disruptive student conduct. According to the Board, the changes were necessary to comply with a complaint settlement with the Office of Civil Rights. Specifically, the emergency rule specifies that the rule prohibiting threatening or disruptive conduct only applies when such conduct is dangerous to others and not when the conduct is dangerous only to the perpetrator. Additionally, the emergency rule adds criteria for determining whether and what type of disciplinary action should be taken against a student for threatening or disruptive conduct. The emergency rule also adds due process elements to disciplinary actions, including minimum notice requirements and timing of the assessment of any such action.

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)

No Impact on Local Governments.

Department of State
Division of Publications
312 Rosa L. Parks, 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: 08-14-15
Rule ID(s): 6002
File Date (effective date): 8/18/15
End Effective Date: 2/14/16

Emergency Rule Filing Form

Emergency rules are effective from date of filing for a period of up to 180 days.

Agency/Board/Commission:	Tennessee Board of Regents
Division:	System-wide Student Rules
Contact Person:	Mary G. Moody
Address:	Office of General Counsel 1415 Murfreesboro Rd., Ste. 336 Nashville, Tennessee
Zip:	37217
Phone:	615-366-4438
Email:	Mary.Moody@tbr.edu

Rule Type:
X Emergency Rule

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

Statement of Necessity:

In January, 2015 the U.S. Department of Education, Office for Civil Rights (OCR) completed its investigation of a complaint from a student at a TBR institution. The Complainant alleged discrimination on the basis of disability and retaliation. OCR found that the institutional policy is in noncompliance with Section 504 at 34 C.F.R. §§ 104 et seq., and Title II, with respect to two (2) issues alleged by the Complainant.
As a result of the investigation and settlement with OCR, TBR and its institutions must revise the language in its Rule and subordinate policies to come into compliance with Section 504 and Title II.

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**
0240-02-03	Student Conduct and Disciplinary Sanctions
Rule Number	**Rule Title**
0240-02-03-.02	Disciplinary Offenses
0240-02-03-.04	Disciplinary Sanctions
0240-02-03-.06	Disciplinary Procedures

RULES
OF
TENNESSEE BOARD OF REGENTS

CHAPTER 0240-02-03
STUDENT CONDUCT AND DISCIPLINARY SANCTIONS

0240-02-03-.02 DISCIPLINARY OFFENSES.

(2) (a) Threatening or Disruptive Conduct ~~Dangerous to Self or Others~~. Any conduct, or attempted conduct, which **poses a threat to the safety of others or where the student's behavior is disruptive of the institution's learning environment;** ~~constitutes a danger to any person's health, safety, or personal well-being, including, but not limited to, the following:~~

~~1. Physical and/or verbal abuse,~~

~~2. Threats and/or intimidation,~~

~~3. Harm inflicted on self;~~

Authority: T.C.A. §§ 4-5-101 et seq., 49-7-123(a)(1) and 49-8-203. Administrative History: Repeal of all rules by the Public Chapter 261; effective July 1, 1983. New rule filed April 28, 1983; effective July 13, 1983. Amendment filed August 28, 1984; effective November 13, 1984. Amendment filed May 13, 1991; effective August 28, 1991. Amendment filed July 3, 1996; effective November 28, 1996. Amendment filed November 20, 1996; effective March 28, 1997. Amendment filed February 18, 1999; effective June 28, 1999. Amendment filed August 11, 2004; effective December 29, 2004. Amendments filed November 12, 2008; effective March 30, 2009. Repeal and new rule filed August 10, 2011; effective January 29, 2012.

0240-02-03-.04 DISCIPLINARY SANCTIONS.

(2) Definition of Sections:

(m) Interim Involuntary Withdrawal or Suspension. As a general rule, the status of a student or student organization accused of violation of these regulations **or institutional policies** should not be altered until a final determination has been made in regard to the charges. However, **interim involuntary withdrawal or** suspension, pending the completion of disciplinary procedures, may be imposed upon a finding by the appropriate institutional official that the ~~continued presence of the accused on campus constitutes an immediate threat to the physical safety and well-being of the accused,~~ **conduct or attempted conduct of the student poses a direct threat to the safety of** any other member of the institution, its guests, property, or ~~substantial disruption of classroom~~ **the student's behavior is materially and substantially disruptive of the institution's learning environment**, or other campus activities. In any case of **interim involuntary withdrawal or** suspension, the student, or student organization, shall be given an opportunity at the time of the decision, or as soon thereafter as reasonably possible, to contest the suspension;

Authority: T.C.A. §§ 4-5-101 et seq. and 49-8-203. Administrative History: Repeal of all rules by Public Chapter 261; effective July 1, 1983. New rule filed April 28, 1983; effective July 13, 1983. Amendment filed August 28, 1984; effective November 13, 1984. Amendment filed August 11, 2004; effective December 29, 2004. Amendments filed November 12, 2008; effective March 30, 2009. Repeal and new rule filed August 10, 2011; effective January 29, 2012.

0240-02-03-.06 DISCIPLINARY PROCEDURES.

(2) Contested Case Procedure: All cases which may result in: (a) suspension or expulsion of a student~~, or student organization,~~ from the institution for disciplinary reasons, or (b) revocation of registration of a student organization, are subject to the contested case provisions of the ~~Tennessee~~ Uniform Administrative Procedures Act (~~T~~UAPA), T.C.A. §§ 4-5-301 et seq., and shall be processed in accord with the Uniform Contested Case procedures adopted by the Board of Regents, unless the student or organization, after receiving written notice, waives those procedures and elects to have the case disposed

of in accord with institutional procedures or waives all right to contest the case under any procedure. These procedures shall be described in the institution's policy.

(a) For cases which may result in Interim Involuntary Withdrawal or Suspension, the institution must incorporate the guidelines set forth herein at (6) in its decision-making processes.

(6) Interim Involuntary Withdrawal or Suspension Hearings: Hearings conducted with regard to interim involuntary withdrawals or suspensions, imposed prior to or pending the outcome of a disciplinary investigation or proceeding shall be conducted consistent with the minimum requirements of due process applicable to an institutional hearing, taking into account the need for a timely hearing. The evidence presented at the hearing shall be limited to that which is relevant to the basis asserted for imposition of the interim involuntary withdrawal or suspension.

(a) In determining whether a student should be involuntarily withdrawn or suspended for threatening or disruptive conduct, the institution shall consider the nature, duration, severity, and probability of the threat posed and/or the disruption caused by a student, relying on the best available objective evidence and, if applicable and obtainable, the most current medical evidence.

(b) The institutions shall also determine whether reasonable modifications of its policies, practices, or procedures could sufficiently mitigate the risk.

(c) Absent exigent circumstances creating an imminent risk of harm, the assessment will be made prior to a decision to involuntarily withdraw or suspend based on the threat he or she poses to others.

(d) If exigent circumstances warrant the immediate removal of a student from the institution, the student will receive, at a minimum, notice and an initial opportunity to present evidence immediately after being placed on involuntary withdrawal and the opportunity to initiate full due process within thirty (30) days of the removal.

Authority: T.C.A. §§ 4-5-101 et seq. and 49-8-203. Administrative History: Original rule filed August 10, 2011; effective January 29, 2012.

The vote by the Agency on these rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Governor Haslam				X	
Dr. Russ Deaton				X	
Gregory Duckett	X				
Darrell Freeman	X				
Tom Griscom	X				
Commissioner Julius Johnson				X	
Fran Marcum	X				
Commissioner Candice McQueen				X	
Barbara Prescott	X				
Rebecca Reeves	X				
Emily Reynolds	X				
Howard Roddy	X				
Leigh Shockey	X				
Parker Smith	X				
Johnny Stites	X				
Robert Thomas	X				
Danni Varlan	X				
Dottye Webb	X				

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

Date: July 22, 2015

Signature: Mary M. Moody

Name of Officer: Mary Moody

Title of Officer: General Counsel & Board Secretary

MICHAEL SHEEN
STATE OF TENNESSEE NOTARY PUBLIC
COUNTY OF SUMNER

Subscribed and sworn to before me on: July 22, 2015

Notary Public Signature:

My commission expires on: 2-6-17

Tennessee Board of Regents Rules
0240-02-03 Student Conduct and Disciplinary Sanctions
0240-02-03-.02 Disciplinary Offenses
0240-02-03-.04 Disciplinary Sanctions
0240-02-03-.06 Disciplinary Procedures

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

Herbert H. Slatery III
Attorney General and Reporter

8/5/2015
Date

Department of State Use Only

Filed with the Department of State on: 8/18/15

Effective for: 180 *days

Effective through: 2/14/16

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

Tre Hargett
Secretary of State

RECEIVED
2015 AUG 18 PM 1:08
SECRETARY OF STATE
PUBLICATIONS

G.O.C. STAFF RULE ABSTRACT

BOARD**:**	State Board of Education
SUBJECT:	Educator Licensure
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 49-1-302
EFFECTIVE DATES:	August 27, 2015 through February 23, 2016
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	According to the board, the emergency rule simplifies the licensure system for teachers. The emergency rule was initially filed as a proposed rule in 2014 and had an effective date of March 18, 2014. In order to synchronize the effective date of the rule with other Board policies, the rule was stayed with a new effective date of June 30, 2015, which resulted in the rule not being included in Public Chapter 349 of 2015 (the "Rules Omnibus Bill") and becoming void. The emergency rule was filed to ensure that the rule changes are in effect on September 1, 2015.

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)

Not applicable.

Department of State
Division of Publications
312 Rosa L. Parks, 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: 08-29-15
Rule ID(s): 2001e
File Date (effective date): 08/27/15
End Effective Date: 02/23/16

Emergency Rule Filing Form

Emergency rules are effective from date of filing for a period of up to 180 days.

Agency/Board/Commission:	State Board of Education
Division:	
Contact Person:	Angela C. Sanders
Address:	1st Floor, Andrew Johnson Tower 710 James Robertson Parkway Nashville, TN
Zip:	37243
Phone:	615-253-5707
Email:	Angela.C.Sanders@tn.gov

Rule Type:
X Emergency Rule

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

Statement of Necessity:

Pursuant to Tenn. Code Ann. § 4-5-208(a)(1), this rule qualifies as an emergency rule. Without the adoption of this emergency rule by the State Board of Education ("SBE") an immediate danger to the public welfare will exist and the nature of this danger is such that the use of any other form of rulemaking would not adequately protect the public.

Background:

On July 25, 2014 the SBE adopted this rule regarding Teacher Licensure on final reading. This teacher licensure rule constitutes a full overhaul and re-structuring of SBE rules with regard to the licensure of teachers in the State of Tennessee. These changes streamline the current teacher licensure system where currently numerous types of teacher licenses are issued, which is confusing and overly burdensome. This full overhaul simplifies the structure of teacher licenses issued in the State and revises and streamlines the way in which current teachers renew licenses and advance from one license type to another.

This rule change was originally promulgated as a proposed rule, was filed with the Attorney General's office, and gained the approval and signature of the Attorney General on December 11, 2014. The rule was then filed with the Secretary of State's office on December 18, 2014 and given an effective date of March 18, 2015. Because the SBE wished to bring the effective date of this rule in line with the SBE's new policy on teacher licensure (which clarifies that the licensure changes will not begin until September 1, 2015), a stay of effective date was filed with the Secretary of State's office, staying the effective date of these rules to June 1, 2015.

While the rule was set to become effective prior to the June 30, 2015 deadline for expiration of rules adopted in 2014 (per Tenn. Code Ann. § 4-5-226(a)) the June 1, 2015 effective date fell after the effective date of the Rules Omnibus bill, Public Chapter 349 of the 109th General Assembly. Public Chapter 349 ("the Act") states that it covers "all permanent rules filed in the office of secretary of state after January 1, 2014, that are in effect on the effective date of this act. . ." The Act became effective on the date signed by the Governor, May 4, 2015. Because this rule was not in effect on the date the Act was signed by the Governor, it therefore was left out of the Act and as such, was allowed to expire on June 30, 2015.

In order to correct this technical anomaly which allowed the teacher licensure rule to expire, the SBE must file the rule as an emergency rule to ensure that all of the changes contemplated by the rule are in effect in time for the September 1, 2015 implementation date. It is essential to the public welfare that this rule be promulgated as an emergency rule because significant state resources and taxpayer dollars have gone into preparing for the implementation of this new rule up to this point. In addition, mass confusion among teachers, local education agencies, teacher preparation programs and other key stakeholders would result.

It is essential that this rule be in place on an emergency basis in time for the September 1, 2015 implementation date for the following reasons:

- Significant training events have taken place over the last year since the SBE voted in July 2014 to approve the rule change. The Tennessee Department of Education ("TDOE") has committed significant resources to communicate the new rule and policy to key stakeholder groups. This communication to stakeholders has involved TDOE staff traveling to stakeholder group meetings across the state and giving presentations on the licensure changes on approximately 30 occasions. In addition, TDOE staff has spent considerable time and resources answering hundreds of individual e-mails to educators and administrators regarding the new licensure system set to take effect on September 1.
- Key stakeholder groups have also committed time and other valuable resources to prepare for the changes. For example, educator preparation providers and local education agencies ("LEAs") throughout the State have spent time planning for the shifts required by this new rule. Specifically, recommendations for teacher candidates who would like to be issued a practitioner license based on being admitted to an alternate route program requires that these two stakeholder groups communicate and agree on the steps in the process. Many LEAs have already communicated this information to prospective teachers and to their Human Resources staff.
- In addition, the State has contracted with a vendor to develop a new online licensure data system that is designed specifically for the new licensure structure set forth in this rule. This was a significant undertaking and is a critical component of the new licensure system.
- In August 2015, the TDOE will be training key stakeholders from across the state regarding the new teacher licensure data system. All of this training is interconnected with implementation of the new rule and policy.
- State resources and taxpayer dollars were spent to develop and publish communications materials (e.g., new operating procedures, updated website) in preparation for the transition to the new rule and policy.
- A delay would create the need for widespread, intensive communication to key stakeholders who have been preparing to transition to the new rule and policy on September 1st. Costs would be significant not only for the state, but also for our key stakeholders. In addition, the delay would likely cause much unnecessary frustration and confusion.
- If this rule is not in place on an emergency basis, the entire system of issuing, renewing and advancing teacher licenses in the State would be thrust into confusion. This would permeate all levels from individual teachers seeking to gain, renew or advance a license to teacher preparation programs and LEAs.

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/RuleTitle per row)

Chapter Number	Chapter Title
0520-02-03	Educator Licensure
Rule Number	**Rule Title**
0520-02-03-.01	General Information and Regulations
0520-02-03-.02	Teacher Licenses
0520-02-03-.03	Licensure, Instructional Leader
0520-02-03-.04	School Service Personnel Licenses
0520-02-03-.05	Occupational Education Licenses
0520-02-03-.06	Out of State Applicants
0520-02-03-.07	Other Special Cases
0520-02-03-.08	Permits
0520-02-03-.09	Denial, Formal Reprimand, Suspension and Revocation
0520-02-03-.10 through 0520-02-03-.94	Repealed

Substance of Proposed Rule

CHAPTER 0520-02-03
~~TEACHER EDUCATION AND LICENSURE~~ EDUCATOR LICENSURE

Repeal/New

TABLE OF CONTENTS

0520-02-03-.01	General Information and Regulations	0520-02-03-.06	Out of State Applicants
0520-02-03-.02	Teacher Licenses	0520-02-03-.07	Other Special Cases
0520-02-03-.03	Licensure, Instructional Leader	0520-02-03-.08	Permits
0520-02-03-.04	School Service Personnel Licenses	0520-02-03-.09	Denial, Formal Reprimand, Suspension and Revocation
0520-02-03-.05	Occupational Education Licenses	0520-02-03-.10 through 0520-02-03-.94	Repealed

0520-02-03-.01 General Information and Regulations.

(1) Prospective Educators.

(a) Securing a License. The educator shall be responsible for securing a license, verifying its accuracy, maintaining its validity, registering it with the employing board of education, and meeting the requirements of T.C.A. § 49-5-101.

(b) Unless otherwise designated in this chapter, prospective educators seeking initial licensure must hold a bachelor's degree from a regionally accredited college or university, be enrolled in or have completed a state-approved educator preparation program, and meet all requirements regarding assessments and qualifying scores as specified by State Board of Education rules or policy.

(c) Prospective educators seeking initial licensure must meet requirements in at least one area of endorsement.

(d) In-State Applicant for Initial License. An In-State applicant applying for an initial license must apply through the appropriate official of the educator preparation provider.

(e) At the time of application, prospective educators seeking initial licensure must be recommended by an approved educator preparation provider.

1. For applicants who have completed a licensure program, the provider must indicate that the applicant has successfully completed all required components of the program and indicate the area(s) of endorsement for which the applicant has successfully completed requirements. Recommendations must be received within five (5) years of the date of program completion. If a candidate completed a program more than five (5) years prior to the date of the application, the candidate may attempt to secure an updated recommendation from the provider. Educator preparation providers are under no obligation to issue an updated recommendation. Recommendations must attest that the candidate has met current standards for licensure.

2. For applicants who are enrolled in a licensure program, the provider must indicate the area(s) of endorsement for which the applicant has successfully demonstrated content

competency. Verification of successful program completion, including verification of the endorsement areas for which the candidate is recommended, must be submitted by the end of the validity period of the initial license.

(f) Official transcripts of all college credits, bearing the school seal and/or signature of the registrar, must be submitted with the application. These transcripts and forms upon which licensure is granted become the property of the State of Tennessee. Photocopies are not acceptable.

(g) Upon receipt of the applications, transcripts, and results of required assessments, materials will be evaluated and a license will be issued to the applicant or the applicant will be notified of deficiencies.

(2) Licensed Educators.

(a) Duration of License or Certificate. Initial licenses become valid on the date of issuance. The end of the validity period of the license will be set for August 31. The year of expiration is determined by the date of issuance and advances one year on March 1 of each year.

(b) Licensure Expectations. All expectations for licensure advancement and renewal shall be defined in State Board of Education policy.

(c) Change of Name and Address. If a licensed educator changes his or her name or address by legal means, the holder must report such changes to the Office of Educator Licensing within thirty (30) days of making the change.

Authority: T.C.A. § 49-1-302.

0520-02-03-.02 Teacher Licenses.

(1) General requirements for licensure, as defined in Rule 0520-02-03-.01 General Information and Regulations, apply to all teacher licenses.

(2) Licenses Currently Issued.

(a) Practitioner License. Initial three-year (3) teacher license issued to applicants who hold a bachelor's degree, are enrolled in or have completed a preparation program approved by the State Board of Education, and have verified content knowledge as defined in State Board policy. The Practitioner License may be renewed once.

(b) Professional License. A six-year (6) teacher license issued upon meeting licensure expectations at the practitioner level and completion of an approved educator preparation program. The Professional License is renewable.

(c) Non-Public School Teacher License. A ten-year (10) license issued to individuals who qualify for or hold a valid Tennessee teaching license, have current certification from the National Board for Professional Teaching Standards, or hold a valid license from another state. The non-public license only provides license for an educator to work in a Tennessee non-public school. The Non-Public School Teacher License is renewable.

(d) JROTC Teacher License. A five-year (5) license issued to active or retired military personnel who seek to serve as junior reserve officers' training corps (JROTC) teachers, based upon a certification of preparation by the branch of the military approving the teacher placement. The JROTC teacher license does not entitle an individual to teach courses other than those designated as part of the JROTC program, consistent with the requirements of T.C.A. § 49-5-108. No other teaching endorsements may be added to a JROTC license. JROTC teachers may earn a teaching

license with an endorsement in a content area through an educator preparation program approved by the State Board of Education. The JROTC Teacher License is renewable.

(e) Adjunct License. A one-year (1) license issued to applicants who teach no more than three (3) classes in subject areas of critical shortage as designated by the State Board of Education and who hold a bachelor's degree, have verified knowledge of the teaching content area and have completed a pre-service preparation program approved by the State Board of Education. The Adjunct License is renewable nine (9) times.

Adjunct teachers must meet the following criteria:

1. The applicant must hold at least a bachelor's degree or a master's degree from a regionally accredited institution of higher education that includes at least twenty-four (24) semester hours of credit in the content area in which they will be teaching.

2. The applicant must have at least five (5) years of work experience in the subject(s) to be taught.

3. The applicant must have completed the pre-service portion of an adjunct licensure program that addresses the knowledge and skills in the professional education core and that has been approved by the State Board of Education.

4. A Tennessee director of schools must state intent to employ the applicant for specific subject(s) and course(s) not to exceed three (3) classes and must provide a mentor teacher for the applicant during the first year of teaching.

5. Applicants are eligible for an adjunct license for the specific subject(s) or course(s) indicated on the application in subject areas of critical shortage as designated by the State Board of Education.

6. School systems shall assess the effectiveness of the teachers annually using the evaluation procedures approved by the State Board of Education.

7. Applicants may renew an adjunct license annually but not more than nine (9) times provided that a director of schools states intent to employ and provided that the applicant has received a successful evaluation in the preceding year. Before the first renewal, the applicant must have passed all required licensure examinations.

8. The teacher shall not attain licensure beyond the approved subject(s) or course(s) without successfully completing the state's regular or alternative licensure programs.

(f) International Teacher Exchange License. The international exchange teacher license is a time-limited license designed to allow eligible teachers from other nations to teach in Tennessee schools for up to three (3) consecutive years. The validity period begins on the date all application requirements for the license are met or July 1, whichever is more recent, and expires on June 30, three (3) years later. If the applicant is employed between January 1 and June 30, the validity period begins on the first (1st) day of the month of employment and expires June 30, three (3) years later. If the teacher wishes to remain beyond the third (3rd) year, the teacher must satisfy all requirements for a professional teacher license. Districts that wish to employ teachers holding this license must adhere to State Board of Education policies regarding mentoring and evaluation of these teachers. The International Teacher Exchange License is nonrenewable.

Teachers participating in an international teacher exchange program must meet the following criteria:

1. Hold primary citizenship outside the United States;

2. Hold the U.S. equivalent of a bachelor's degree or higher;

3. Hold a foreign teacher credential in a field comparable to that recognized in Tennessee;

4. Demonstrate proficiency in English;

5. Provide verification from a Tennessee director of schools of intent to employ; and

6. Provide a recommendation by the government of a country with whom the Department of Education has signed a memorandum of agreement or by a recognized international exchange program.

(3) License Advancement and Renewal.

(a) Practitioner License. At the end of the validity period of the initial practitioner license, if the educator has not met licensure expectations, the practitioner license may be renewed once. If the educator has not met licensure expectations at the end of the second validity period, the license will become inactive.

(b) Professional License. At the end of the validity period of the professional license, if the educator has met licensure expectations, the license will be renewed. If the educator has not met licensure expectations, the license will become inactive.

(4) Additional Endorsements.

(a) Licensed teachers must submit qualifying scores on all required, state-approved teacher licensure specialty assessments for additional endorsements.

(b) Licensed teachers seeking to add endorsements may complete an educator preparation program. In some cases, as defined in State Board policy, teachers may add an endorsement by using a test-only.

(c) Licensed teachers who complete programs of study for additional endorsements at education preparation providers in other states may be recommended by the out-of-state provider to the Tennessee Department of Education.

Authority: T.C.A. § 49-1-302.

0520-02-03-.03 Licensure, Instructional Leader.

(1) General requirements for licensure, as defined in Rule 0520-02-03-.01 General Information and Regulations, apply to all instructional leader licenses.

(2) Licenses currently issued:

(a) Instructional Leadership License-Aspiring (ILL-A). Initial five-year (5) instructional leader license issued candidates who are enrolled in an instructional leader preparation program approved by the State Board. The Instructional Leadership License-Aspiring is not renewable.

(b) Instructional Leadership License-Beginning (ILL-B). Initial five-year (5) instructional leader license issued to candidates who have completed an instructional leader preparation program approved by the State Board and have submitted a qualifying score on the required licensure assessment. The Instructional Leadership License-Beginning is renewable.

(c) Instructional Leadership License-Professional (ILL-P). Five-year (5) instructional leader license

issued to educators who have met licensure expectations for advancement from the ILL-B. The Instructional Leadership License-Professional is renewable.

(d) Instructional Leadership License-Exemplary (ILL-E). Eight-year (8) instructional leader license issued to educators who have held an ILL-P or Professional Administrator License (PAL) for at least two (2) years and are eligible for the ILL-E as stipulated by State Board policy. The Instructional Leadership License-Exemplary is renewable.

(3) License Advancement and Renewal.

(a) Instructional Leadership License-Aspiring (ILL-A). At the end of the validity period of the initial ILL-A, if the educator has met licensure expectations, the license will be advanced to the ILL-B. At the end of the validity period of the initial ILL-A, if the educator has not met licensure expectations, the license will become inactive.

(b) Instructional Leadership License-Aspiring (ILL-B). At the end of the validity period of the ILL-B, if the educator has met licensure expectations as defined in State Board policy, the license will be advanced to the ILL-P. If the educator has not met licensure expectations by the end of the first validity period of the license, the ILL-B may be renewed once. If the educator has not met licensure expectations at the end of the second validity period, the license will become inactive.

(c) Instructional Leadership License-Professional (ILL-P). At the end of the validity period of the ILL-P, if the educator has met licensure expectations as defined in State Board policy, the license will be renewed. If the educator has not met licensure expectations, the license will become inactive.

(d) Instructional Leadership License-Professional (ILL-E). At the end of the validity period of the ILL-E, if the educator has met licensure expectations as defined in State Board policy, the license will be renewed. If the educator has not met licensure expectations, the license will become inactive.

(4) Those who hold a Professional Administrator License (PAL) license issued prior to September 15, 2009, may maintain that license until July 1, 2022, at which time the ILL-P or ILL-E license will be required.

(5) Assistant principals, teaching principals, or dual assignment personnel with more than fifty percent (50%) of their responsibilities involved in instructional leadership must be properly licensed.

Authority: T.C.A. § 49-1-302.

0520-02-03-.04 School Service Personnel Licenses.

(1) General requirements for licensure, as defined in Rule 0520-02-03-.01 General Information and Regulations, apply to all school service personnel licenses.

(2) Licenses Currently Issued.

(a) Practitioner School Service Personnel License. Initial three-year (3) license issued to applicants upon completion of a preparation program approved by the State Board of Education, leading to endorsement as a school counselor, school psychologist, school social worker, school food service supervisor, school speech-language pathologist, or school audiologist. Applicants must have also submitted qualifying scores on the state required licensure assessment. The Practitioner School Service Personnel License is renewable once.

(b) Professional School Service Personnel License. A six-year (6) license issued to applicants upon meeting licensure expectations at the practitioner level, as a school counselor, school

psychologist, school social worker, school food service supervisor, school speech-language pathologist, or school audiologist. The Professional School Service Personnel License is renewable.

(3) License Advancement and Renewal.

(a) Practitioner School Service Personnel License. At the end of the validity period of the initial practitioner license, if the educator has not met licensure expectations, the practitioner license may be renewed once. If the educator has not met licensure expectations at the end of the second validity period, the license will become inactive.

(b) Professional School Service Personnel License. At the end of the validity period of the professional license, if the educator has met licensure expectations, the license will be renewed. If the educator has not met licensure expectations, the license will become inactive.

Authority: T.C.A. § 49-1-302.

0520-02-03-.05 Occupational Education Licenses.

(1) General requirements for licensure, as defined in Rule 0520-02-03-.01 General Information and Regulations, apply to all occupational education licenses, except for the requirement of a bachelor's degree.

(2) Licenses Currently Issued.

(a) Practitioner Occupational Education License. Initial three-year (3) license issued to applicants who have met endorsement requirements pursuant to State Board of Education policy and have had content verification provided by the Tennessee Department of Education. The Practitioner Occupational Education License is renewable once.

(b) Professional Occupational Education License. A six-year (6) license issued to applicants upon meeting licensure expectations at the practitioner level, completing coursework covering the professional education standards and additional requirements as defined in State Board of Education policy. The Professional Occupational Education License is renewable.

(3) License Advancement and Renewal.

(a) Practitioner Occupational Education License. At the end of the validity period of the initial practitioner license, if the educator has not met licensure expectations, the practitioner license may be renewed once. If the educator has not met licensure expectations at the end of the second validity period, the license will become inactive.

(b) Professional Occupational Education License. At the end of the validity period of the professional license, if the educator has met licensure expectations, the license will be renewed. If the educator has not met licensure expectations, the license will become inactive.

Authority: T.C.A. § 49-1-302.

0520-02-03-.06 Out of State Applicants.

(1) General Requirements.

(a) Tennessee has adopted the provisions of Interstate Agreement on Qualification of Educational Personnel as proposed by the National Association of State Directors of Teacher Education and

Certification (NASDTEC). Participation in this agreement is evidenced by signed reciprocal contracts between Tennessee and other participating states as defined by the Interstate Certification Project (ICP).

(b) Licensure may be awarded to applicants from states which are not parties to the ICP but which are accredited by or affiliated with the national accrediting body with which the State of Tennessee has entered into an agreement on the same basis as those applying from states which are party to the ICP agreement.

(c) Licensure may be awarded to applicants not covered by Paragraphs (a) or (b) above on the same basis as those applying from states which are party to the ICP agreement if one of the following conditions is met:

1. The applicant has received a recommendation from an educator preparation provider which is accredited by the same national accrediting body with which the State of Tennessee has entered into an agreement; or

2. The Tennessee Department of Education has reviewed a state's process for approving educator preparation providers and has found the process to be acceptable for purposes of granting full licensure in Tennessee.

(d) An applicant from a state other than Tennessee must apply directly to the Office of Educator Licensing.

(e) The application for licensure must be accompanied by a set of official transcripts supplied by all institutions attended by the applicant.

(f) An applicant from another state must submit qualifying scores for assessments required by the State Board of Education. Scores must have been obtained within five (5) years prior to the date of application for licensure.

(g) No license or endorsement which requires a Master's Degree or above as part of its requirements may be awarded to an individual not possessing said degree.

(2) Teacher Licensure for Applicants Trained in Other States.

(a) Applicants meeting all requirements will be issued a practitioner license except those who have been certified by the National Board for Professional Teaching Standards who will be issued a professional license.

(b) Licensure will be awarded in all endorsement areas (the areas most similar to those awarded in Tennessee), which are reflected on the full, currently valid licensure credential(s) supplied by the other qualifying state(s) and the area most closely related to the area of certification by the National Board for Professional Teaching Standards.

(c) Applicants with an out-of-state endorsement in a teaching area covering a grade span that is more narrow than the comparable Tennessee K-12 teaching endorsement, shall be awarded the Tennessee endorsement based on parameters defined by State Board policy.

(3) Instructional Leader Licensure for Applicants Trained in Other States.

(a) Applicants who have completed an instructional leader preparation program approved in a state other than Tennessee who have not yet submitted qualifying scores on the required licensure assessment may be issued an ILL-A. Upon submitting qualifying scores, the educator license may be advanced to the ILL-B.

(b) Applicants meeting all requirements will be issued an ILL-B.

(4) School Service Personnel Licensure for Applicants Trained in Other States.

(a) Applicants meeting all requirements will be issued a Practitioner License.

(b) The Practitioner School Services Personnel License will be awarded to applicants who hold a full and valid school service personnel license from another state.

Authority: T.C.A. § 49-1-302.

0520-02-03-.07 Other Special Cases.

(1) Correspondence and Extension Credit. Credit earned by correspondence and extension instruction with a member of the National University Extension Association or the Teacher College Association for Extension and Field Services shall be accepted for licensure purposes to the extent of one- fourth of the amount of credit necessary for the particular license desired.

(2) Experience in Lieu of Student Teaching. An individual applying for a license who holds at least a bachelor's degree may present evidence of three (3) years of successful teaching experience in an approved school or a National Association for the Education of Young Children (NAEYC) accredited early childhood education program at the grade level of work authorized by the endorsement sought in lieu of student teaching.

(3) Military Service.

(a) The duration of a license may be extended from the date of termination of military service for the number of years, not to exceed four (4), which the holder spent in military service during the life of the license. Four (4) calendar months of military service during any school year shall be counted as a full year for purposes of extending the license.

(b) The five (5) years preceding the issuance of a teacher license, within which time academic credit must be earned, shall not include the years spent in military service.

(4) Validation of Credit from an Unapproved Institution.

(a) Credit from an unapproved institution may be accepted for licensure when such credit has been accepted in full on a transcript by an approved institution for advanced standing toward a degree, provided that not less than eight (8) semester hours of satisfactory work has been completed in the approved institution.

(b) Degree or credit from an institution accredited by a regional accrediting association but not approved for teacher education will be accepted.

(c) An applicant who holds the bachelor's degree from an unapproved institution and has otherwise met all of the requirements for a license may validate the degree and apply for a license as follows:

1. Enter an approved graduate school and complete a minimum of eight (8) semester hours in an approved educator preparation program. The applicant must successfully complete the approved educator preparation program in order to advance to a Professional License.

2. Secure a properly certified statement from an educator preparation program approved by the State Board of Education indicating all deficiencies and/or probations have been

met.

(5) Emergency Teaching Credential. A one-year (1) credential, effective for only one school year, to be issued to displaced licensed teachers under one of the following circumstances:

(a) The Governor declares a state of emergency or declares a disaster under T.C.A. § 58-2-107, and the Commissioner of Education determines the necessity of conferring an emergency credential to displaced persons, or

(b) A federal state of emergency is declared anywhere in the United States, and the Commissioner of Education determines the necessity of conferring an emergency credential to displaced persons.

Authority: T.C.A. § 49-1-302.

0520-02-03-.08 Permits.

(1) Permits.

(a) The state may issue a permit when a school district or public charter school meets the following requirements:

1. A director of schools or public charter school leader must state intent to employ and indicate the position to be held by the applicant.

2. The school district or public charter school must indicate that it is unable to obtain the services of a licensed educator for the type and kind of school in which a vacancy exists.

3. The school district or public charter school must identify and document a targeted recruitment strategy for the position or shortage areas. The strategy may include, but is not limited to, partnerships with educator preparation providers, advertisements, or recruitment campaigns.

(b) The state may issue a permit to a school district or public charter school to hire an applicant one (1) time and only if the applicant holds a bachelor's degree. A bachelor's degree is not required for an applicant in occupational education.

Authority: T.C.A. § 49-1-302.

0520-02-03-.09 Denial, Formal Reprimand, Suspension and Revocation.

(1) Automatic Revocation of License. The State Board of Education shall automatically revoke the license of a licensed teacher or administrator without the right to a hearing upon receiving verification of the identity of the teacher or administrator together with a certified copy of a criminal record showing that the teacher or school administrator has been convicted of any felony or offense listed at T.C.A. §§ 40-35-501(i)(2), 39-17-417, a sexual offense or a violent sexual offense as defined in 40-39-202, any offense in title 39, chapter 13, 39-14-301 and 39-14-302, 39-14-401 and 39-14-404, 39-15-401 and 39-15-402, 39-17-1320, or any other offense in title 39, chapter 17, part 13 (including conviction on a plea of guilty or nolo contendere, conviction for the same or similar offense in any jurisdiction, or conviction for the solicitation of, attempt to commit, conspiracy, or acting as an accessory to such offenses). The Board will notify persons whose licenses are subject to automatic revocation at least thirty (30) days prior to the Board meeting at which such revocation shall occur.

(2) The State Board of Education may revoke, suspend, reprimand formally, or refuse to issue or renew a license for the following reasons:

(a) Conviction of a felony;

(b) Conviction of possession of narcotics;

(c) Being on school premises or at a school-related activity involving students while documented as being under the influence of, possessing or consuming alcohol or illegal drugs;

(d) Falsification or alteration of a license or documentation required for licensure;

(e) Denial, suspension or revocation of a license or certificate in another jurisdiction for reasons which would justify denial, suspension or revocation under this rule; or

(f) Other good cause. Other good cause shall be construed to include noncompliance with security guidelines for Tennessee Comprehensive Assessment Program (TCAP) or successor tests pursuant to T.C.A. § 49-1-607, default on a student loan pursuant to T.C.A. § 49-5-108(d)(2) or failure to report under part (e).

For purposes of this part (2), "conviction" includes entry of a plea of guilty or nolo contendere or entry of an order granting pre-trial or judicial diversion.

A person whose license has been denied, suspended or revoked may not serve as a volunteer or be employed, directly or indirectly, as an educator, paraprofessional, aide, substitute teacher or in any other position during the period of the denial, suspension or revocation.

(3) Restoration of License.

(a) A person whose license has been suspended shall have the license restored after the period of suspension has been completed, and, where applicable, the person has complied with any terms prescribed by the State Board. Suspended licenses are subject to expiration and renewal rules of the State Board.

(b) A person whose license has been denied or revoked under parts (1) or (2) may apply to the State Board to have the license issued or restored upon application showing that the cause for denial or revocation no longer exists and that the person has complied with any terms imposed in the order of denial or revocation. In the case of a felony conviction, before an application will be considered, the person must also show that any sentence imposed, including any pre-trial diversion or probationary period has been completed. Application for such issuance or restoration shall be made to the Office of Educator Licensing and shall be voted on at a regularly scheduled meeting of the State Board of Education. Nothing in this section is intended to guarantee restoration of a license.

(4) Notice of Hearing. Any person who is formally reprimanded or whose license is to be denied, suspended or revoked under part (2) or who is refused a license or certificate under part (3) shall be entitled to written notice and an opportunity for a hearing to be conducted as a contested case under the Tennessee Uniform Administrative Procedures Act, T.C.A. § 4-5-301, et seq.

(5) Notification of Office of Educator Licensing. It is the responsibility of the superintendent of the employing public or non-public school or school system to inform the Office of Educator Licensing of licensed teachers or administrators who have been suspended or dismissed, or who have resigned, following allegations of conduct which, if substantiated, would warrant consideration for license suspension or revocation under parts (1) or (2). The report shall be submitted within thirty (30) days of the suspension, dismissal or resignation. The superintendent shall also report felony convictions of licensed teachers or

administrators within thirty (30) days of receiving knowledge of the conviction.

Authority: T.C.A. § 49-1-302.

0520-02-03-.01	Licensure, General Requirements	0520-02-03-.13 through 0520-02-02-.20	Reserved
0520-02-03-.02	Licensure, Instructional Leader	0520-02-03-.21	Effective Dates
0520-02-03-.03 through 0520-02-03-.10	Reserved	0520-02-03-.22 through 0520-02-03-.94	Repealed
0520-02-03-.11	Induction		
0520-02-03-.12	Post-Baccalaureate Program		

0520-02-03-.01 LICENSURE, GENERAL REQUIREMENTS.

a. Teacher candidates seeking licensure shall complete teacher education programs approved by the State Board of Education.

b. Teacher candidates seeking licensure shall meet the requirements in at least one area of endorsement.

c. Teacher candidates seeking licensure shall complete either a full semester student teaching program or an internship program in accordance with rule 0520-02-03-.11.

d. Teachers seeking initial licensure at the graduate level may complete a post-baccalaureate program in accordance with rule 0520-02-03-.12.

e. All programs of teacher education, both undergraduate and graduate, and the institutions providing these programs must be approved by the State Board of Education. This shall be done according to standards and guidelines established by the State Board of Education and the National Council for Accreditation of Teacher Education.

f. Teacher candidates seeking initial licensure must be recommended by an institution of higher education with an approved program of teacher education; the institution shall indicate the area(s) of endorsement for which the teacher has successfully completed requirements.

g. Teacher candidates seeking initial licensure must meet all requirements for tests specified by the State Board of Education.

h. The teacher license is the principal license authorized by the State Board of Education. All endorsements except as otherwise specifically provided are included on this license.

i. Teacher candidates seeking to add endorsements to a teacher license may complete a teacher education program for additional endorsement. Institutions which offer programs for additional endorsements shall submit to the State Department of Education a list of specialty areas in which additional endorsements are offered. Institutions of higher education will verify completion of the appropriate course requirements to the Department of Education. Teachers who are licensed in Tennessee and who complete programs of study for additional endorsements at institutions in other states may be recommended by the out-of-state institution to the State Department of Education for additional endorsements. Teachers who hold a valid Tennessee license with a 7-12 endorsement may add a 7-12 endorsement by obtaining a passing score on all of the required, state-approved teacher licensure specialty exams and submitting application with the passing scores to the State Department of Education.

j. Candidates seeking licensure and endorsement as a school counselor shall complete a graduate degree and a program of studies approved by the State Board of Education. Candidates must be recommended by an institution of higher education with a preparation program approved according to standards and guidelines established by the State Board of Education.

k. Candidates seeking licensure and endorsement as a school social worker shall complete a program in social work either at the bachelor's or master's level; candidates shall also complete a program of studies in school social work approved by the State Board of Education. Candidates must be recommended by an institution of higher education with a preparation program approved according to standards and guidelines established by the State Board of Education.

l. Candidates seeking licensure and endorsement as a school psychologist shall complete a program of studies in school psychology at the graduate level including an academic year internship. Candidates must be recommended by an institution of higher education with a preparation program approved according to standards and guidelines established by the State Board of Education.

m. Candidates seeking licensure and endorsement as an occupational education teacher shall complete successfully a teacher education program not to exceed eighteen (18) semester hours designed to meet the knowledge and skills for teacher preparation. Candidates must be recommended by an institution of higher education with a preparation program approved according to standards and guidelines established by the State Board of Education.

n. Candidates seeking licensure and endorsement as a reading specialist shall complete advanced studies in a program approved by the State Board of Education. Candidates must be recommended by an institution of higher education with a preparation program approved according to standards and guidelines established by the State Board of Education.

o. Candidates seeking licensure and endorsement as a school speech-language pathologist shall complete a program of studies in speech-language pathology at the graduate level. Candidates shall meet the licensure standards, employment standards and examination requirements of the State Board of Education.

p. Candidates seeking licensure to serve as a school speech-language teacher working under the direction of a school speech-language pathologist are trained to supplement – not supplant – the services of a school speech-language pathologist and must hold a minimum of a bachelors degree and:

(a) Hold a current teacher license earned through a teacher preparation program approved according to standards and guidelines established by the state board of education. And also completes an endorsement program of studies in speech-language including 100 hours of supervised clinical practice. Candidates must be recommended by an institution of higher education with a preparation program approved according to standards and guidelines established by the State Board of Education;

(b) Complete a teacher preparation program of studies for teachers of speech-language including 100 hours of supervised clinical practice. Candidates must be recommended by an institution of higher education with a preparation program approved according to standards and guidelines established by the State Board of Education. These candidates are eligible for a School Speech-Language Teacher (PreK-12) (A) license; or

(c) Complete a bachelor's level program of studies in speech-language, speech-language disorders or communications disorders including 100 hours of supervised clinical practice. Candidates must be recommended by an institution of higher education with a bachelor level program and verify the candidate meets the standards and guidelines of the Tennessee Teacher Licensure Standards: Special Education, School Speech-Language Teacher (PreK-12). These candidates are eligible for a Special Education, School Speech-Language Teacher (PreK-12) (B) license. The (B) license does not entitle the holder to teach courses other than those designated as part of a speech language program in a school based setting. No other teaching endorsement may be

added to a (B) license. Other teaching credentials may only be earned through a preparation program approved according to standards and guidelines established by the State Board of Education.

q. Candidates seeking licensure and endorsement as a school audiologist shall complete a program of studies in audiology at the graduate level. Candidates shall meet the licensure standards, employment standards and examination requirements of the State Board of Education.

0520-02-03-.02 LICENSURE, INSTRUCTIONAL LEADER.

(1) On September 15, 2009, current State Board of Education approval of all administrator or supervisor preparation programs will expire.

(2) Beginning September 15, 2009, only programs initially approved or re-approved by the State Board of Education, according to the Board's Instructional Leadership Policy, will be eligible to prepare and recommend candidates for licensure as instructional leaders.

(3) Beginning September 15, 2009, the two-tiered licensure system for school administrators and supervisors [Beginning Administrator License (BAL) and Professional Administrator License (PAL)] will be replaced with the following four-tiered instructional leader licensure system, further outlined in State Board policy:

(a) Instructional Leadership License-Aspiring (ILL-A)

(b) Instructional Leadership License-Beginning (ILL-B)

(c) Instructional Leadership License-Professional (ILL-P)

(d) Instructional Leadership License-Exemplary (ILL-E)

(4) Instructional Leadership License-Aspiring (ILL-A). After September 15, 2009, a candidate admitted to a State Board approved instructional leadership program may receive an ILL-A if the following conditions are met:

(a) License terms and responsibilities are specified in the LEA-preparation program partnership agreement

(b) The candidate is recommended by the preparation program. An ILL-A is valid only while a candidate is enrolled and participating in an approved instructional leadership preparation program. The employment of an instructional leadership candidate with an ILL-A is not a guarantee of continued employment or job advancement, nor does it require an increased salary.

(5) Beginning Administrator License (BAL). A State Board program approved to recommend licensure and/or endorsement in school administration and supervision prior to September 15, 2009 may continue to recommend program graduates or candidates enrolled prior to September 15, 2009, for a BAL.

(a) Candidates who entered an administrator or supervisors preparation program prior to September 15, 2009, may complete that program or transition into an approved instructional leadership preparation program at the same institution and become eligible for an ILL-B.

(6) Effective September 15, 2009, assistant principals, teaching principals, or dual assignment

personnel with more than fifty percent (50%) of their responsibilities involved in instructional leadership must be properly licensed or be enrolled in a State Board approved instructional leadership preparation program.

(7) Instructional Leadership License-Beginning (ILL-B). After September 15, 2009, a candidate seeking licensure in instructional leadership must be recommended by a preparation program approved after September 15, 2009, as per State Board policy.

(a) The ILL-B is valid for three (3) years of continuous employment as an instructional leader.

(b) The ILL-B expires five (5) years after issuance if the candidate has not been employed as an instructional leader per State Board policy.

(8) Instructional Leadership License-Professional (ILL-P). Those who hold a PAL license issued prior to September 15, 2009, may maintain that license until July 1, 2022, at which time the ILL-P or ILL-E license will be required.

(9) After September 15, 2009, those who hold an ILL-B and have completed three (3) years of satisfactory employment as an instructional leader may receive an ILL-P if the candidate has met the requirements of the State Board of Education policy.

(a) The ILL-P is valid for five (5) years of employment as an instructional leader.

(b) The ILL-P is renewable per State Board policy.

(10) Instructional Leadership License - Exemplary (ILL-E). After September 15, 2009, those who have held an ILL-P or PAL for at least two (2) years shall be eligible for the ILL-E if they meet the licensure requirements for an ILL-E, are recommended by the director of the employing school system and are approved by the State Department of Education appointed leadership council as per State Board policy.

0520-02-03-.03 THROUGH 0520-02-03-.10 RESERVED.

0520-02-03-.11 INDUCTION.

(1) General Requirements

Teacher candidates shall successfully complete an induction program consisting of either a full school year internship or a student teaching semester in accordance with standards and procedures established by the State Board of Education.

(2) Internship.

(a) The internship is a full school year experience following completion of a baccalaureate degree whereby teacher candidates are inducted into the teaching profession.

(b) The internship experience shall be planned jointly by the institutions of higher education in which the interns are enrolled and the local school system(s) in which the interns are placed with significant input from principals and teachers in the school system(s) and shall be approved by the State Board of Education.

(c) The internship experiences shall include classroom teaching, observation, course work, seminars, and planning and shall occur primarily in the school setting; internship experiences may occur in either public schools or other state approved schools.

(d) The interns shall spend more than half of the school year in direct teaching activities.

(e) The interns shall have regular and frequent contact with a team of mentors, both higher

education faculty and K-12 teachers, throughout the school year.

(f) K-12 teachers shall assume mentoring roles and, in cooperation with higher education faculty mentors, direct the activities of the interns in the classroom.

(g) The interns shall have direct teaching experiences with students with diverse learning needs and varied backgrounds in at least two classrooms which may be in different schools.

(h) The interns shall be supplemental to the existing staff in the schools in which they are located.

(i) The performance of interns shall be evaluated by the internship team composed of teacher mentors, higher education faculty mentors, and principals or their designees.

(j) The interns shall be evaluated by the principals or designees to determine apprentice licensure status using the approved local evaluation model and by the institution of higher education faculty mentors to award college credit.

(k) Teacher candidates who successfully complete a full school year internship experience shall have the year count as the first year of apprentice licensure; the internship shall count as one full school year (10 months) on the state pay scale. The salary or stipend paid to an intern, if any, may be less than the regular salary on the state salary schedule.

(3) Student Teaching.

(a) The student teaching experience is a planned professional semester of at least 15 weeks that includes full day teaching and observation activities as an initial step in the induction process for teacher candidates.

(b) The student teaching experience shall be planned jointly by the institution of higher education and the local school system with significant input from principals and teachers and shall be approved by the State Board of Education as part of the teacher education program approval process.

(c) The student teachers shall have direct teaching experiences with students with diverse learning needs and varied backgrounds in at least two classrooms which may be in different schools.

(d) Regular seminars shall be held with higher education faculty to focus on application and analysis of teaching knowledge in the classroom.

(e) Cooperating teachers shall assume mentoring roles and direct, in cooperation with higher education faculty mentors, the activities of teacher candidates in the classroom.

(f) The performance of teacher candidates shall be evaluated by cooperating teachers and supervising higher education faculty with shared responsibility for formative evaluation.

(g) Summative evaluation shall be the responsibility of the higher education faculty with significant input from and consultation with cooperating teachers.

(4) Beginning Teacher Program.

(a) The beginning teacher program is an assisted experience whereby employed first year teachers (those with less than one year experience who have completed student teaching but not an internship) are inducted into the teaching profession.

(b) The beginning teacher program shall be planned by the local school system with significant input from principals and teachers.

(c) The beginning teacher program experiences shall occur primarily in the school setting and shall include classroom observations, opportunities for informed observations of both experienced teachers and other first year teaching peers, in-service seminars, and regular and frequent contact with teacher mentors throughout the school year.

(d) Mentors, along with principals, shall provide periodic and frequent formative evaluation designed to provide feedback and support to the beginning teachers.

(e) The principal or designee shall provide summative evaluation of the beginning teacher.

(f) Assistance shall continue until the beginning teacher acquires apprentice licensure status.

0520-02-03-.12 POST-BACCALAUREATE PROGRAM.

Purpose: The post-baccalaureate teacher education program is designed to attract talented individuals and those seeking to change careers who have the potential to become good teachers.

(1) Teacher candidates may seek licensure through post-baccalaureate teacher education programs, provided such programs are approved by the State Board of Education.

(2) Institutions of higher education may apply to the State Board of Education to offer experimental post-baccalaureate teacher education programs in accordance with standards and procedures adopted by the State Board of Education.

(3) Teacher candidates admitted to post-baccalaureate teacher education programs shall be those individuals who completed baccalaureate degrees but who did not complete teacher preparation requirements.

(4) The post-baccalaureate teacher education program shall include either an internship or student teaching experience, planned jointly by the institution of higher education in which the teacher candidate is enrolled and the cooperating local school system with significant input from principals and teachers.

(5) Institutions shall require candidates to address any deficiencies in their undergraduate education to ensure the attainment of the knowledge and skills required in general education, professional education, and the major for the teaching field; additional course work may be required based upon assessment of the knowledge and skills demonstrated by the candidate when admitted to the program or through assessment of performance during the induction experience.

(6) Teacher candidates in post-baccalaureate programs shall complete at least an entire summer or full semester carrying a full load of course work in professional education including laboratory/field experiences prior to entering an induction experience.

(7) The induction experience shall be structured in accordance with the standards and guidelines of the State Board of Education for the internship or student teaching.

(8) Additional course work to meet other knowledge and skills required in general education, professional education, or the teaching area constituting a major shall be completed during and/or following the induction experience.

(9) Teacher candidates who successfully complete an internship shall have that experience count

as the first year of apprentice licensure; the internship shall count as one full school year (10 months) on the state pay scale.

(10) If candidates complete student teaching, they are eligible for beginning teacher (apprentice) licensure and for a beginning teacher program during their first year of teaching in Tennessee.

0520-02-03-.13 THROUGH 0520-02-03-.20 RESERVED.

0520-02-03-.21 EFFECTIVE DATES

(1) Teacher candidates seeking licensure and endorsement in the following areas of endorsement shall meet the requirements of Rules 0520-02-03-.01(1) through (9) and 0520-02-03-.11 by the effective dates listed below. Revised areas of endorsement are superseded according to the dates listed below.

Endorsement Area	Effective Date Sept. 1	Superseded Date Aug. 31	Single Effective Date Column
Secondary Education: Career and Technical Education			
Agriculture Education 7-12			2009
Agriscience 7-12			2009
Business Education 7-12			2004
Business Technology 7-12			2004
Family and Consumer Sciences 5-12			2008
Food Production & Management Services 9-12			2008
Early Childhood Care and Services 9-12			2008
Technology Engineering Education			2005
Marketing Education 7-12			2010
Occupational Education			
Health Sciences Education 9-12			2002
Trade and Industrial Education 9-12			2002

(2) Candidates seeking licensure and endorsement in the following areas shall meet the requirements of rules 0520-02-03-.01 (14), (15), (16), (19), and (20) by the effective dates listed below. Revised areas of endorsement are superseded according to the dates listed below.

Endorsement Area	Effective Date Sept. 1	Superseded Date Aug. 31
School Counselor PreK-12	1996	
School Social Worker PreK-12	1996	
School Psychologist PreK-12	2001	

~~Sp Ed School Audiologist PreK-12~~	~~2006~~	
~~Sp Ed School Speech/Language Pathologist PreK-12~~	~~2006~~	

~~(3) Candidates seeking endorsement as a beginning administrator shall meet the requirements of rules 0520-02-03-.01 (10) through (13) no later than September 1, 1994.~~

~~(4) Candidates seeking to add endorsements to a teacher license shall meet the requirements of the initial endorsements no later than the date on which the requirements for the initial endorsements become effective.~~

~~0520-02-03-.22 THROUGH 0520-02-03-.94 REPEALED~~

* 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)
Chancey	X				
Edwards	X				
Hartgrove	X				
Johnson	X				
Pearre	X				
Roberts	X				
Rolston	X				
Tucker	X				
Troutt	X				
Student Member				X	

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

Date: 8/4/15

Signature:

Name of Officer: Dr. Sara Heyburn

Title of Officer: Executive Director

PHYLLIS E. CHILDRESS STATE OF TENNESSEE NOTARY PUBLIC DAVIDSON COUNTY
MY COMMISSION EXPIRES January 9, 2016

Subscribed and sworn to before me on: 8/4/15

Notary Public Signature: Phyllis E Childress

My commission expires on:

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

Herbert H. Slatery III
Attorney General and Reporter

8/24/2015
Date

Department of State Use Only

RECEIVED
2015 AUG 27 AM 10:25
SECRETARY OF STATE
PUBLICATIONS

Filed with the Department of State on: 08/27/15

Effective for: 180 days *days

Effective through: 02/23/16

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

Tre Hargett
Secretary of State

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Commerce and Insurance
DIVISION:	Insurance
SUBJECT:	Suitability in Annuity Transactions
STATUTORY AUTHORITY:	Tennessee Code Annotated, Sections 56-2-301, 56-2-305, 56-3-508, 56-6-124, and 56-8-101 et seq.
EFFECTIVE DATES:	November 1, 2015 through June 30, 2016
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	The rulemaking hearing rule establishes requirements for any person seeking to recommend, sell, exchange, or replace annuities in Tennessee. The rule will require the recommendation or sale of annuities be suitable based on the consumer's suitability information. The rule will also require insurance producers to complete four hours of training prior to selling annuities. Insurance producers who hold a life insurance line of authority on November 1, 2015, will have six months within which to obtain the four hours of training. The rule will further require insurers, general agents, independent agencies, and insurance producers keep records of information upon which annuity recommendations and transactions were based.

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.

Comment 1
0780-01-86-.07(2)(a)2.

It was commented by five separate commenters that proposed rule did not contain the six (6) month grace period included in the NAIC model rule during which time current insurance producers may complete the new training imposed under the Suitability in Annuity Transaction rule amendments. As drafted, once the rules take effect, presently licensed insurance producers will be unable to sell annuities until they complete the four (4) hour training course mandated under the proposed rules.

Agency Response to Comment 1

The Department agrees with this comment. The Department agrees to include a six (6) month grace period for agents to complete the continuing education once this rule becomes effective. Once the rule amendments are promulgated, there will be a three (3) month period before the rule takes effect; producers may complete the requisite training for compliance with these amendments during that three (3) month time frame between the rule's promulgation and its effective date or during the six (6) month grace period after the rule becomes effective.

Comment 2
0780-01-86-.06(8)(a)

It was commented that the NAIC model for suitability in annuity transactions reads that "[t]his [paragraph] applies to FINRA broker-dealer sales of annuities if the suitability . . . ." and the proposed rule reads that "[t]his paragraph applies to FINRA broker-dealer sales of variable annuities and fixed annuities if the suitability . . . ." Commenter requests the proposed rule be changed to mimic the NAIC model rule.

Agency Response to Comment 2

The Department agrees with this comment. The Department agrees to use the NAIC model language in part 0780-01-86-.06(8)(a) of the rule.

Comment 3
0780-01-86-.07(2)(c)3.

It was commented that the NAIC model for suitability in annuity transactions reads "[h]ow product specific annuity contract features affect consumers[]" and the proposed rule reads "[h]ow fixed, variable and indexed annuity contract provisions affect consumers[.]" Commenter requests the proposed rule be changed to mimic the NAIC rule.

Agency Response to Comment 3

The Department agrees with this comment. The Department agrees to use the NAIC model language in part 0780-01-86-.07(2)(c)3. of the rule.

Comment 4
0780-01-86-.05(8)

It was commented that defining the term "recommendation" as advice on whether an individual should purchase an annuity is overly broad and difficult for insurance producers to determine when they are giving such advice. Commenter is concerned that this broad definition will force insurance producers to document each and every annuity sale conversation held with clients.

Agency Response to Comment 4

The Department disagrees with this comment. The Department does not believe the definition of recommendation is overly broad. Recommendation is defined in conjunction with the requirements under this rule as advice on whether an individual should purchase an annuity that results in a purchase in accordance with that advice. Advice that does not result in a purchase, exchange or replacement of an annuity, in accordance with that advice, does not have to be maintained as a record.

Further, this annuity suitability regulation has been adopted in approximately 40 states and is supported by the American Council of Life Insurers. This rule is currently the national standard for determining suitability in annuity transactions. By enacting this rule, Tennessee will require no more of its insurance companies and producers than the vast majority of the states in this country. Further, this rule was developed by the NAIC with industry input and support.

Comment 5
0780-01-86-.06(5)(a)

It was commented that requiring insurance producers to make a record of any recommendation of a purchase of an annuity is a burdensome regulation. Commenter states no such record keeping is currently required for any type of advice or recommendations. Commenter states this regulation will require insurance producers to keep records of all conversations had in discussing annuity sales.

Agency Response to Comment 5

The Department agrees that this rule will require insurance companies and producers to keep additional records that they may currently not keep. However, the Department disagrees with the assessment that these requirements are burdensome. An insurer or an insurance producer must maintain or be able to make available to the commissioner, for five years after the transaction, records of the information collected from a policyholder and other information used in making the recommendation for a policyholder to purchase or exchange an annuity that resulted in another insurance transaction or series of insurance transactions. The annuity suitability rule does not require an insurance company or an insurance producer to keep records of all conversations had concerning annuity sales.

Further, other types of licensees are required to maintain similar types of records. For example, surplus lines agents are required to maintain records on (1) Amount of the insurance and perils insured against; (2) Brief general description of property insured and where located; (3) Gross premium charged; (4) Return premium paid, if any; (5) Rate of premium charged upon the several items of property; (6) Effective date of the contract and its terms; (7) Name and post office address of the insured; (8) Name and home office address of the insurer; (9) Amount collected from the insured; and (10) Other information as required by the commissioner.

Finally, this annuity suitability regulation has been adopted in approximately 40 states and is supported by the American Council of Life Insurers. This rule is currently the national standard for determining suitability in annuity transactions. By enacting this rule, Tennessee will require no more of its insurance companies and producers than the vast majority of the states in this country. Further, this rule was developed by the NAIC with industry input and support.

Comment 6
0780-01-86-.06(5)(c)

It was commented that requiring a customer to sign a statement acknowledging the customer is purchasing an annuity without a recommendation for such when the customer chooses to enter into an annuity transaction without a recommendation for such by an insurance producer is excessive. Commenter states that there is already too much paperwork, and this addition is excessive.

Agency Response to Comment 6

The Department disagrees that this will create excessive paperwork. This annuity suitability regulation has been adopted in approximately 40 states and is supported by the American Council of Life Insurers. This rule is currently the national standard for determining suitability in annuity transactions. By enacting this rule, Tennessee will require no more of its insurance companies and producers than the vast majority of the states in this country. Further, this rule was developed by the NAIC with industry input and support.

Comment 7
0780-01-86-.06(6)(a)5.

It was commented that requiring the insurer to maintain reasonable procedures to detect recommendations which are not suitable is unhelpful to consumers as it will create delay in the processing of such annuity purchases, provided this regulation is intended to apply prospectively. It was further commented that regardless of prospective or retroactive application of this regulation, this will create increased underwriting costs to insurers. Commenter is concerned this regulation requires inspection of every record of every recommendation for every sale.

Agency Response to Comment 7

The Department disagrees that this rule will create delay in the processing of annuity purchases. This annuity suitability regulation has been adopted in approximately 40 states and is supported by the American Council of Life Insurers. This rule is currently the national standard for determining suitability in annuity transactions. By enacting this rule, Tennessee will require no more of its insurance companies and producers than the vast majority of the states in this country. Further, this rule was developed by the NAIC with industry input and support.

Comment 8
0780-01-86-.07

It was commented that the requirement to complete the four hour training course in order to sell annuities should be required for current producers upon their next license renewal date, rather than upon these rules taking effect.

Agency Response to Comment 8

The Department disagrees with this comment. As discussed above, the Department will allow a grace period for six (6) months for producers to take the required continuing education training. The Department believes that the six (6) month grace period is sufficient for producers to take a four (4) hour continuing education training.

Comment 9
0780-01-86-.09(1)

It was commented that the requirement that insurers and insurance producers keep records regarding information collected and used in recommending annuities, and making such records available to the Commissioner of the Department of Commerce and Insurance places consumer financial and personal information at risk. Commenter is concerned consumers do not want their information shared with the Department.

Agency Response to Comment 9

The Department disagrees with this comment. First, the recordkeeping requirement does not require that all records be turned over to the commissioner.

Second, this rule is being promulgated pursuant to T.C.A. § 56-8-104(15), which makes it an unfair trade practice for any person to replace a life insurance policy or an annuity contract in a manner contrary to rules promulgated by the commissioner pursuant to Title 56, chapter 8, Part 1. Any such records that are turned over to the commissioner would be done so pursuant to an investigation under T.C.A. § 56-8-107 and all materials obtained pursuant to such an investigation are confidential under T.C.A. § 56-8-107(d).

Third, other licensees are required to collect information from policyholders and maintain those records for commissioner inspection. For example, surplus lines agents must maintain records on (1) Amount of the insurance and perils insured against; (2) Brief general description of property insured and where located; (3) Gross premium charged; (4) Return premium paid, if any; (5) Rate of premium charged upon the several items of property; (6) Effective date of the contract and its terms; (7) Name and post office address of the insured; (8) Name and home office address of the insurer; (9) Amount collected from the insured; and (10) Other information as required by the commissioner.

Finally, this annuity suitability regulation has been adopted in approximately 40 states and is supported by the American Council of Life Insurers. This rule is currently the national standard for determining suitability in annuity transactions. By enacting this rule, Tennessee will require no more of its insurance companies and producers than the vast majority of the states in this country. Further, this rule was developed by the NAIC with industry input and support.

Comment 10
0780-01-86

It was commented that this is the first time any regulation has required insurance producers to keep records of advice they provide to customers. Commenter is concerned requiring recommendation records for annuities will set precedent for such requirements in other areas of insurance practice.

Agency Response to Comment 10

The Department disagrees with this comment. The rule does not require insurance companies or producers to maintain a record of all advice given to policyholders. Insurers and producers are required to maintain a record of all recommendations that resulted in another insurance transaction or series of insurance transactions. As discussed above, a recommendation is defined as advice to a policyholder that results in a purchase, exchange or replacement of an annuity in accordance with that advice. Advice that does not result in a purchase, exchange or replacement of an annuity, in accordance with that advice, does not have to be maintained as a record.

Further, other types of licensees are required to maintain similar types of records. For example, as discussed above, surplus lines agents are required to maintain records on (1) Amount of the insurance and perils insured against; (2) Brief general description of property insured and where located; (3) Gross premium charged; (4) Return premium paid, if any; (5) Rate of premium charged upon the several items of property; (6) Effective date of the contract and its terms; (7) Name and post office address of the insured; (8) Name and home office address of the insurer; (9) Amount collected from the insured; and (10) Other information as required by the commissioner.

Finally, this annuity suitability regulation has been adopted in approximately 40 states and is supported by the American Council of Life Insurers. This rule is currently the national standard for determining suitability in annuity transactions. By enacting this rule, Tennessee will require no more of its insurance companies and producers than the vast majority of the states in this country. Further, this rule was developed by the NAIC with industry input and support.

Comment 11
0780-01-86

It was commented that transfer forms created by insurers should include a question which indicates whether the representative processing the transfer has securities licensure. Commenter further stated that that insurers, life insurance companies, and annuity companies should not accept transfers from a security to purchase a non-security product unless the representative holds securities licensure. Commenter states such insurers should have forms including questions which contemplate if funds used in transfers are coming from non-security licensed representatives.

Agency Response to Comment 11

The Department acknowledges that this is an issue which warrants further discussion; however, the Department does not believe that it has the authority to implement such requirements within the scope of this rulemaking. The Department will consider this comment in any future updates to this rule.

Comment 12
0780-01-86

It was commented that insurance producers without securities licensure who move money out of securities, into fixed or indexed annuities may not be making such sales in the best interest of their clients. Commenter further stated that an insurance producer would be unable to competently suggest a fixed or indexed annuity over a security absent the proper securities licensure. Commenter believes this matter needs to be addressed by the proposed rules.

Agency Response to Comment 12

The Department acknowledges that this is an issue which warrants further discussion; however, the Department does not believe that it has the authority to implement such requirements within the scope of this rulemaking. The Department will consider this comment in any future updates to this rule. Nevertheless, the Department will enforce the securities laws against any insurance producer engaging in any securities related activity without the proper securities registrations.

Comment 13
0780-01-86

It was commented that insurance companies should be responsible for restricting insurance producers from transferring money out of securities investments for the purpose of purchasing a product sold by the insurance producer. Commenter suggests insurance companies should require a representative hold a securities license prior to transferring money from any security for any investment purpose.

Agency Response to Comment 13

The Department acknowledges that this is an issue which warrants further discussion; however, the Department does not believe that it has the authority to implement such requirements within the scope of this rulemaking. The Department will consider this comment in any future updates to this rule. Nevertheless, the Department will enforce the securities laws against any insurance producer engaging in any securities related activity without the proper securities' registrations.

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.

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). The proposed rules are not anticipated to have a significant impact on small businesses. Tenn. Code Ann. §§ 56-2-301, 56-2-305, 56-3-508, 56-6-112, 56-6-124, 56-8-101 *et seq.*, 56-8-104(15), 56-8-107, and 56-8-110 authorize the Commissioner to promulgate rules in order to regulate the recommendation, sale, exchange, or replacement of annuities. The proposed rules establish requirements for any person seeking to recommend, sell, exchange, or replace annuities in the State of Tennessee. These rules will require the recommendation or sale of annuities be suitable based on the consumer's suitability information. These rules will also require insurance producers to complete four hours of training prior to selling annuities. These rules will further require insurers, general agents, independent agencies, and insurance producers keep records of information upon which annuity recommendations and transactions were based.

The outcome of the analysis set forth in Tenn. Code Ann. § 4-5-403 is as follows:

(1) The proposed rules will only apply to insurance producers or insurance companies seeking to recommend, sell, exchange, or replace annuities.

(2) The projected reporting, recordkeeping, and other administrative costs associated with compliance with this proposed rule, while an increase from that which is currently required, is not anticipated to place any substantial burden on any individual or small business engaged in annuity transactions.

(3) The effect on small businesses is negligible. The proposed amendment will have no effect on consumers, and will only affect those insurance producers and insurance companies engaged in annuity transactions.

(4) There are no alternative methods to make the proposed rule less costly, less intrusive, or less burdensome.

(5) This proposed rule was developed by the NAIC with industry input and support (NAIC Model Rule No. 275). Furthermore, approximately forty (40) states have implemented substantially similar versions of this proposed rule.

(6) Only insurance producers and insurance companies engaged in annuity transactions are required to comply with this rule. Exempting any producer or company from these proposed rules would place Tennessee residents at a greater risk of engaging in unsuitable annuity transactions at the recommendation of such a producer or company.

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 will not have an impact on local governments.

Department of State
Division of Publications
312 Rosa L. Parks Avenue, 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: 08-01-15
Rule ID(s): 5996
File Date: 8/3/15
Effective Date: 11/1/15

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:	Kathleen Dixon, Assistant General Counsel
Address:	The Davy Crockett Tower, 8th Floor, 500 James Robertson Parkway, Nashville, Tennessee
Zip:	37243
Phone:	(615) 532-6830
Email:	kathleen.dixon@tn.gov

Revision Type (check all that apply):
X Amendment
X 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**
0780-01-86	Suitability in Annuity Transactions
Rule Number	**Rule Title**
0780-01-86-.01	Purpose
0780-01-86-.02	Scope
0780-01-86-.03	Authority
0780-01-86-.04	Exemptions
0780-01-86-.05	Definitions
0780-01-86-.06	Duties of Insurers and Insurance Producers
0780-01-86-.07	Penalties and Mitigation of Responsibility
0780-01-86-.08	Recordkeeping

(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to http://state.tn.us/sos/rules/1360/1360.htm)

Chapter 0780-1-86
Suitability in Annuity Transactions

Chapter 0780-01-86 Suitability in Annuity Transactions is amended by deleting the current language of the Chapter in its entirety and replacing it with the language below:

Table of Contents

0780-01-86-.01 Purpose
0780-01-86-.02 Scope
0780-01-86-.03 Authority
0780-01-86-.04 Exemptions
0780-01-86-.05 Definitions
0780-01-86-.06 Duties of Insurers and Insurance Producers
0780-01-86-.07 Insurance Producer Training ~~Penalties and Mitigation of Responsibility~~
0780-01-86-.08 Compliance Mitigation; Penalties ~~Recordkeeping~~
0780-01-86-.09 Recordkeeping ~~Effective Date~~

Rule 0780-01-86-.01 Purpose.

(1) The purpose of this Chapter is to require insurers to establish a system to supervise recommendations ~~set forth standards and procedures for~~ and to set forth standards and procedures for recommendations to consumers that result in transactions ~~a transaction~~ involving annuity products so that the insurance needs and financial objectives of consumers at the time of the transaction are appropriately addressed.

(2) Nothing herein shall be construed to create or imply a private cause of action for a violation of this Chapter.

Authority: T.C.A. §§ 56-2-301, 56-2-305, 56-3-508, 56-6-112, 56-6-124, 56-8-101 *et seq.*, 56-8-104(15), 56-8-107, and 56-8-110.

Rule 0780-01-86-.02 Scope.

This Chapter shall apply to any recommendation to purchase,~~purchase~~ exchange or replace~~or exchange~~ an annuity made to a consumer by an insurance producer, or an insurer where no producer is involved, that results in the purchase, exchange or replacement ~~purchase or exchange~~ recommended.

Authority: T.C.A. §§ 56-2-301, 56-2-305, 56-3-508, 56-6-112, 56-6-124, 56-8-101 *et seq.*, 56-8-104(15), 56-8-107, and 56-8-110.

Rule 0780-01-86-.03 Authority.

This Chapter is issued under the authority of T.C.A. §§ 56-2-301, 56-2-305, 56-3-508, 56-6-112(a), 56-6-112(d), 56-6-124(a), 56-8-101 *et seq.*, 56-8-104, and 56-8-113.

Authority: T.C.A. §§ 56-2-301, 56-2-305, 56-3-508, 56-6-112, 56-6-124, 56-8-101 *et seq.*, 56-8-104(15), 56-8-107, and 56-8-110.

Rule 0780-01-86-.04 Exemptions.

Unless otherwise specifically included, this Chapter shall not apply to transactions~~recommendations~~ involving:

(1) Direct response solicitations where there is no recommendation based on information collected from the consumer pursuant to this Chapter, or; ~~or~~

(2) Contracts used to fund:

(a) An employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act (ERISA);

(b) A plan described by Sections 401(a), 401(k), 403(b), 408(k) or 408(p) of the Internal Revenue Code (IRC), as amended, if established or maintained by an employer;

(c) A government or church plan defined in Section 414 of the IRC, a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under Section 457 of the IRC;

(d) A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;

(e) Settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process; or

(f) Formal prepaid funeral contracts.

Authority: T.C.A. §§ 56-2-301, 56-2-305, 56-3-508, 56-6-112, 56-6-124, 56-8-101 *et seq.*, 56-8-104(15), 56-8-107, and 56-8-110.

Rule 0780-01-86-.05 Definitions.

(1) "Annuity" means an annuity that is an insurance product under State law~~a fixed annuity or variable annuity~~ that is individually solicited, whether the product is classified as an individual or group annuity.;

(2) "Commissioner" means the Commissioner of the Tennessee Department of Commerce and Insurance.;

(3) "Continuing Education Credit" or "CE Credit" means one continuing education credit as defined in Tenn. Comp. Rules and Regs. 0780-01-56.

~~(3) "Department" means the Tennessee Department of Commerce and Insurance;~~

(4) "Continuing Education Provider" or "CE Provider" means an individual or entity that is approved to offer continuing education courses pursuant to Tenn. Comp. Rules and Regs. 0780-01-56.

(5) "FINRA" means the Financial Industry Regulatory Authority or a succeeding agency.;

(6)(4) "Insurer" means a company required to be licensed under the laws of this state to provide insurance products, including annuities;.

~~(6) "Person" means any natural or artificial person including, but not limited to, an individual, partnership, association, trust or corporation;~~

(7)(5) "Insurance producer" means a person required to be licensed under the laws of this state to sell, solicit or negotiate insurance, including annuities;.

(8)(7) "Recommendation" means advice provided by an insurance producer, or an insurer where no producer is involved, to an individual consumer that results in a purchase, exchange or replacement~~purchase or exchange~~ of an annuity in accordance with that advice.

(9) "Replacement" means a transaction in which a new policy or contract is to be purchased, and it is known or should be known to the proposing producer, or to the proposing insurer if there is no producer, that by reason of the transaction, an existing policy or contract has been or is to be:

(a) Lapsed, forfeited, surrendered or partially surrendered, assigned to the replacing insurer or otherwise terminated;

(b) Converted to reduced paid-up insurance, continued as extended term insurance, or otherwise reduced in value by the use of nonforfeiture benefits or other policy values;

(c) Amended so as to effect either a reduction in benefits or in the term for which coverage would otherwise remain in force or for which benefits would be paid;

(d) Reissued with any reduction in cash value; or

(e) Used in a financed purchase.

(10) "Suitability Information" means information that is reasonably appropriate to to determine the suitability of a recommendation, including the following:

(a) Age;

(b) Annual income;

(c) Financial situation and needs, including the financial resources used for the funding of the annuity;

(d) Financial experience;

(e) Financial objectives;

(f) Intended use of the annuity;

(g) Financial time horizon;

(h) Existing assets, including investment and life insurance holdings;

(i) Liquidity needs;

(j) Liquid net worth;

(k) Risk tolerance; and

(l) Tax status.

Authority: T.C.A. §§ 56-2-301, 56-2-305, 56-3-508, 56-6-112, 56-6-124, 56-8-101 *et seq.*, 56-8-104(15), 56-8-107, and 56-8-110.

Rule 0780-01-86-.06 Duties of Insurers and of Insurance Producers.

(1) In recommending to a consumer the purchase of an annuity or the exchange of an annuity that results in another insurance transaction or series of insurance transactions, the insurance producer, or the insurer where no producer is involved, shall have reasonable grounds for believing that the recommendation is suitable for the consumer on the basis of the facts disclosed by the consumer as to his or her investments and other insurance products and as to his or her financial situation and needs, including the consumer's suitability information, and that there is a reasonable basis to believe all of the following:

(a) The consumer has been reasonably informed of various features of the annuity, such as the potential surrender period and surrender charge, potential tax penalty if the consumer sells, exchanges, surrenders or annuitizes the annuity, mortality and expense fees, investment advisory fees, potential charges for and features of riders, limitations on interest returns, insurance and investment components and market risk;

(b) The consumer would benefit from certain features of the annuity, such as tax-deferred growth, annuitization or death or living benefit;

(c) The particular annuity as a whole, the underlying subaccounts to which funds are allocated at the time of purchase or exchange of the annuity, and riders and similar product enhancements, if any, are suitable, and in the case of an exchange or replacement, the transaction as a whole is suitable, for the particular consumer based on his or her suitability information; and

(d) In the case of an exchange or replacement of an annuity, the exchange or replacement is suitable including taking into consideration whether:

1. The consumer will incur a surrender charge, be subject to the commencement of a new surrender period, lose existing benefits (such as death, living or other contractual benefits), or be subject to increased fees, investment advisory fees or charges for riders and similar product enhancements;

2. The consumer would benefit from product enhancements and improvements; and

3. The consumer has had another annuity exchange or replacement and, in particular, an exchange or replacement within the preceding thirty-six (36) months.

(2) Prior to the execution of a purchase, exchange or replacement~~purchase or exchange~~ of an annuity resulting from a recommendation, an insurance producer, or an insurer

where no producer is involved, shall make reasonable efforts to obtain the consumer's suitability information information concerning:

(a) The consumer's financial status;

(b) The consumer's tax status;

(c) The consumer's investment objectives; and

(d) Such other information used or considered to be reasonable by the insurance producer, or the insurer where no producer is involved, in making recommendations to the consumer.

(3) (a) Except as permittedprovided under paragraph (4)Subparagraph (b) of this Paragraph, neither an insurer shall not issue an annuity recommended to a consumer unless there is a reasonable basis to believe the annuity is suitable based on the consumer's suitability information insurance producer, nor an insurer where no producer is involved, shall have any obligation to a consumer under Paragraph (1) of this Rule related to any recommendation if a consumer:

1. Refuses to provide relevant information requested by the insurer or insurance producer;

2. Decides to enter into an insurance transaction that is not based on a recommendation of the insurer or insurance producer; or

3. Fails to provide complete or accurate information.

(b) An insurer or insurance producer's recommendation subject to Paragraph (1) of this Rule must be reasonable under all the circumstances actually known to the insurer or insurance producer at the time of the recommendation.

(4) (a) Except as provided under subparagraph (b) of this paragraph, neither an insurance producer, nor an insurer, shall have any obligation to a consumer under paragraphs (1) or (3) related to any annuity transaction if:
either shall assure that a system to supervise recommendations that is reasonably designed to achieve compliance with this Chapter is established and maintained by complying with Subparagraphs (c) to (e) of this Paragraph, or shall establish and maintain such a system, including, but not limited to:

1. No recommendation is made; Maintaining written procedures; and

2. A recommendation was made and was later found to have been prepared based on materially inaccurate information provided by the consumer; Conducting periodic reviews of its records that are reasonably designed to assist in detecting and preventing violations of this Chapter.

3. A consumer refuses to provide relevant suitability information and the annuity transaction is not recommended; or

4. A consumer decides to enter into an annuity transaction that is not based on a recommendation of the insurer or the insurance producer.

(b) An insurer's issuance of an annuity subject to subparagraph (a) shall be reasonable under all the circumstances actually known to the insurer at the time the annuity is issued. ~~A general agent and independent agency either shall adopt a system established by an insurer to supervise recommendations of its insurance producers that is reasonably designed to achieve compliance with this Chapter, or shall establish and maintain such a system, including, but not limited to:~~

~~1. Maintaining written procedures; and~~

~~2. Conducting periodic reviews of records that are reasonably designed to assist in detecting and preventing violations of this Chapter.~~

~~(c) An insurer may contract with a third party, including a general agent or independent agency, to establish and maintain a system of supervision as required by Subparagraph (a) of this Paragraph with respect to insurance producers under contract with or employed by the third party.~~

~~(d) An insurer shall make reasonable inquiry to assure that the third party contracting under Subparagraph (c) of this Paragraph is performing the functions required under Subparagraph (a) of this Paragraph and shall take such action as is reasonable under the circumstances to enforce the contractual obligation to perform the functions. An insurer may comply with its obligation to make reasonable inquiry by doing all of the following:~~

~~1. The insurer annually obtains a certification from a third party senior manager who has responsibility for the delegated functions that the manager has a reasonable basis to represent, and does represent, that the third party is performing the required functions; and~~

~~2. The insurer, based on reasonable selection criteria, periodically selects third parties contracting under Subparagraph (c) of this Paragraph for a review to determine whether the third parties are performing the required functions. The insurer shall perform those procedures to conduct the review that are reasonable under the circumstances.~~

~~(e) An insurer that contracts with a third party pursuant to Subparagraph (c) of this Paragraph and that complies with the requirements to supervise in Subparagraph (d) of this Paragraph shall have fulfilled its responsibilities under Subparagraph (a) of this Paragraph.~~

~~(f) An insurer, general agent or independent agency is not required by Subparagraphs (a) or (b) of this Paragraph to:~~

~~1. Review, or provide for review of, all insurance producer solicited transactions; or~~

~~2. Include in its system of supervision an insurance producer's recommendations to consumers of products other than the annuities offered by the insurer, general agent or independent agency.~~

~~(g) A general agent or independent agency contracting with an insurer pursuant to Subparagraph (c) of this Paragraph shall promptly, when requested by the insurer pursuant to Subparagraph (d) of this Paragraph, give a certification as described in Subparagraph (d) of this Paragraph or give a clear statement that it is unable to meet the certification criteria.~~

~~(h) No person may provide a certification under Subparagraph (d)1. of this Paragraph unless:~~

~~1. The person is a senior manager with responsibility for the delegated functions; and~~

~~2. The person has a reasonable basis for making the certification.~~

(5) An insurance producer or, where no insurance producer is involved, the responsible insurer representative, shall at the time of sale:

(a) Make a record of any recommendation that is subject to rule 0780-01-86-.06(1);

(b) Obtain a customer signed statement documenting a customer's refusal to provide suitability information, if any; and

(c) Obtain a customer signed statement acknowledging that an annuity transaction is not recommended if a customer decides to enter into an annuity transaction that is not based on the insurance producer's or insurer's recommendation.

~~Compliance with the National Association of Securities Dealers Conduct Rules, now known as the Financial Industry Regulatory Authority (FINRA), pertaining to suitability shall satisfy the requirements under this Rule for the recommendation of variable annuities. However, nothing in this Paragraph shall limit the commissioner's ability to enforce the provisions of this Chapter.~~

(6) (a) An insurer shall establish a supervision system that is reasonably designed to achieve the insurer's and its insurance producers' compliance with this regulation, including, but not limited to, the following:

1. The insurer shall maintain reasonable procedures to inform its insurance producers of the requirements of this Chapter and shall incorporate the requirements of this Chapter into relevant insurance producer training manuals;

2. The insurer shall establish standards for insurance producer product training and shall maintain reasonable procedures to require its insurance producers to comply with the requirements of rule 0780-01-86-.07;

3. The insurer shall provide product-specific training and training materials which explain all material features of its annuity products to its insurance producers;

4. The insurer shall maintain procedures for review of each recommendation prior to issuance of an annuity that are designed to ensure that there is a reasonable basis to determine that a recommendation is suitable. Such review procedures may apply a screening system for the purpose of identifying selected transactions for additional review and may be accomplished electronically or through other means including, but not limited to, physical review. Such an electronic or other system may be designed to require additional review only of those transactions identified for additional review by the selection criteria;

5. The insurer shall maintain reasonable procedures to detect recommendations that are not suitable. This may include, but is not limited to, confirmation of consumer suitability information, systematic customer surveys, interviews, confirmation letters and programs of internal monitoring. Nothing in this part prevents an insurer from complying with this part by applying sampling procedures, or by confirming suitability information after issuance or delivery of the annuity; and

6. The insurer shall annually provide a report to senior management, including to the senior manager responsible for audit functions, which details a review, with appropriate testing, reasonably designed to determine the effectiveness of the supervision system, the exceptions found, and corrective action taken or recommended, if any.

(b) 1. Nothing in rule 0780-01-86-.06(6) restricts an insurer from contracting for performance of a function (including maintenance of procedures) required under subparagraph (a). An insurer is responsible for taking appropriate corrective action and may be subject to sanctions and penalties pursuant to rule 0780-01-86-.08 regardless of whether the insurer contracts for performance of a function and regardless of the insurer's compliance with part 2. of this subparagraph.

2. An insurer's supervision system under subparagraph (a) shall include supervision of contractual performance under this part. This includes, but is not limited to, the following:

(i) Monitoring and, as appropriate, conduction audits to assure that the contracted function is properly performed; and

(ii) Annually obtaining a certification from a senior manager who has responsibility for the contracted function that the manager has a reasonable basis to represent, and does represent, that the function is properly performed.

(c) An insurer is not required to include in its system of supervision an insurance producer's recommendations to consumers of products other than the annuities offered by the insurer.

(7) An insurance producer shall not dissuade, or attempt to dissuade, a consumer from:

(a) Truthfully responding to an insurer's request for confirmation of suitability information;

(b) Filing a complaint; or

(c) Cooperating with the investigation of a complaint.

(8) (a) Sales made in compliance with FINRA requirements pertaining to suitability and supervision of annuity transactions shall satisfy the requirements under this Chapter. This paragraph applies to FINRA broker-dealer sales of annuities if the suitability and supervision is similar

to those applied to variable annuity sales. However, nothing in this paragraph shall limit the commissioner's ability to enforce, including investigate, the provisions of this Chapter.

(b) For subparagraph (a) to apply, the insurer shall:

1. Monitor the FINRA member broker-dealer using information collected in the normal course of an insurer's business; and

2. Provide to the FINRA member broker-dealer information and reports that are reasonably appropriate to assist the FINRA member broker-dealer to maintain its supervision system.

Authority: T.C.A. §§ 56-2-301, 56-2-305, 56-3-508, 56-6-112, 56-6-124, 56-8-101 *et seq.*, 56-8-104(15), 56-8-107, and 56-8-110.

Rule 0780-01-86-.07 Insurance Producer Training.

(1) An insurance producer shall not solicit the sale of an annuity product unless the insurance producer has adequate knowledge of the product to recommend the annuity and the insurance producer is in compliance with the insurer's standards for product training. An insurance producer may rely on insurer-provided product-specific training standards and materials to comply with this rule.

(2) (a) 1. An insurance producer who engages in the sale of annuity products shall complete a one-time four (4) credit training course approved by the department of commerce and insurance and provided by the department of commerce and insurance-approved education provider.

2. Insurance producers who hold a life insurance line of authority on the effective date of this Chapter and who desire to sell annuities shall complete the requirements of this paragraph within six (6) months after the effective date of this Chapter. Individuals who obtain a life insurance line of authority on or after the effective date of this Chapter may not engage in the sale of annuities until the annuity training course required under this rule has been completed.

(b) The minimum length of the training required under rule 0780-01-86-.07(2) shall be sufficient to qualify for at least four (4) CE credits, but may be longer.

(c) The training required under rule 0780-01-86-.07(2) shall include information on the following topics:

1. The types of annuities and various classifications of annuities;

2. Identification of the parties to an annuity;

3. How product specific annuity contract provisions affect consumers;

4. The application of income taxation of qualified and non-qualified annuities;

5. The primary uses of annuities; and

6. Appropriate sales practices, replacement and disclosure requirements.

(d) Providers of courses intended to comply with rule 0780-01-86-.07(2) shall cover all topics listed in the prescribed outline and shall not present any marketing information or provide training on sales techniques or provide specific information about a particular insurer's products. Additional topics may be offered in conjunction with and in addition to the required outline.

(e) A provider of an annuity training course intended to comply with this rule shall register as a CE provider in this State and comply with the rules and guidelines applicable to insurance producer continuing education courses as set forth in Tenn. Comp. Rules and Regs. 0780-01-56.

(f) Annuity training courses may be conducted and completed by classroom or self-study methods in accordance with Tenn. Comp. Rules and Regs. 0780-01-56.

(g) Providers of annuity training shall comply with the reporting requirements and shall issue certificates of completion in accordance with Tenn. Comp. Rules and Regs. 0780-01-56.

(h) The satisfaction of the training requirements of another state that are substantially similar to the provisions of rule 0780-01-86-.07(2) shall be deemed to satisfy the training requirements of this rule in this state.

(i) An insurer shall verify that an insurance producer has completed the annuity training course required under rule 0780-01-86-.07(2) before allowing the producer to sell an annuity product for that insurer. An insurer may satisfy its responsibility under rule 0780-01-86-.07(2) by obtaining certificates of completion of the training course or obtaining reports provided by commissioner-sponsored database systems or vendors or from a reasonably reliable commercial database vendor that has a reporting arrangement with approved insurance education providers.

Authority: T.C.A. §§ 56-2-301, 56-2-305, 56-3-508, 56-6-107, 56-6-112, 56-6-118(b), 56-6-124, 56-8-101 *et seq.*, 56-8-104(15), 56-8-107, and 56-8-110 and Tenn. Comp. Rules and Regs. 0780-01-56-.08.

Rule 0780-01-86-.~~07~~08 Compliance Mitigation; Penalties ~~Penalties and Mitigation of Responsibility~~

(1) An insurer is responsible for compliance with this Chapter. If a violation occurs, either because of the action or inaction of the insurer or its insurance producer, the commissioner may order, pursuant to statutory authority granting power for such order:~~rAny violation of this Chapter subjects an insurer to any applicable sanctions, including but not limited to those found in T.C.A. §§ 56-1-416, 56-2-305, and 56-8-101 *et seq.*~~

(a) An insurer to take reasonably appropriate corrective action for any consumer harmed by the insurer's, or by its insurance producer's, violation of this Chapter;

(b) A general agency, independent agency or the insurance producer to take reasonably appropriate corrective action for any consumer harmed by the insurance producer's violation of this Chapter; and

(c) Appropriate penalties and sanctions.

(2) Any applicable penalty under T.C.A. §§ 56-1-411, 56-2-305, 56-6-112, or 56-8-101, *et seq.* for a violation of this regulation may be reduced or eliminated if corrective action for the consumer was taken promptly after a violation was discovered or the violation was not part of a pattern or practice. ~~Any violation of this Chapter subjects an insurance producer to any applicable sanctions, including but not limited to those found in T.C.A. §§ 56-6-112 and 56-8-101 *et seq.*~~

~~(3) The Commissioner may, in accordance with T.C.A. § 56-1-411, order:~~

~~(a) An insurer to take reasonably appropriate corrective action for any consumer harmed by the insurer's, or by its insurance producer's, violation of this Chapter;~~

~~(b) An insurance producer to take reasonably appropriate corrective action for any consumer harmed by the insurance producer's violation of this Chapter; and~~

~~(c) A general agency or independent agency that employs or contracts with an insurance producer to sell, or solicit the sale, of annuities to consumers, to take reasonably appropriate corrective action for any consumer harmed by the insurance producer's violation of this Chapter.~~

~~(4) Any applicable penalty under the pertinent insurance statutes for a violation of Rule 0780-1-86-.06(1), (2), or (3)(b) may be reduced or eliminated, if corrective action for the consumer was taken promptly after a violation was discovered.~~

Authority: T.C.A. §§ 56-1-408, 56-1-409, 56-1-411, 56-1-416, 56-2-301, 56-2-305, 56-3-508, 56-6-112, 56-6-124, 56-8-101 *et seq.*, 56-8-104(15), 56-8-107, 56-8-109, and 56-8-110.

Rule 0780-01-86-.~~08~~ 09 Recordkeeping

(1) Insurers, general agents, independent agencies and insurance producers shall maintain or be able to make available to the commissioner records of the information collected from the consumer and other information used in making the recommendations that were the basis for insurance transactions for five (5) years after the insurance transaction is completed by the insurer. An insurer is permitted, but shall not be required, to maintain documentation on behalf of an insurance producer.

(2) Records required to be maintained by this Chapter may be maintained in paper, photographic, micro-process, magnetic, mechanical or electronic media or by any process that accurately reproduces the actual document.

Authority: T.C.A. §§ 56-1-408, 56-1-409, 56-1-411, 56-1-416, 56-2-301, 56-2-305, 56-3-508, 56-6-112, 56-6-124(a), 56-8-101 *et seq.*, 56-8-104(15), 56-8-107, 56-8-109, and 56-8-110.

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

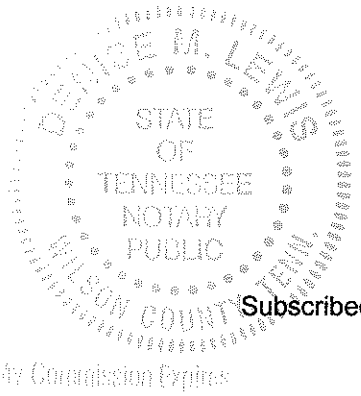
Board Member	Aye	No	Abstain	Absent	Signature (if required)
N/A					

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Commissioner of the Department of Commerce and Insurance on 6/30/2015 (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: March 11, 2015

Rulemaking Hearing(s) Conducted on: (add more dates). May 5, 2015



Date: 6/30/15

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: 6/30/15

Notary Public Signature: Clarice M Lewis

My commission expires on: 2/15/16

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.

RECEIVED
2015 AUG -3 PM 2:45
SECRETARY OF STATE
PUBLICATIONS

Herbert H. Slatery III
Attorney General and Reporter

7-24-15
Date

Department of State Use Only

Filed with the Department of State on: 8/3/15

Effective on: 11/1/15

Tre Hargett
Secretary of State

G.O.C. STAFF RULE ABSTRACT

BOARD:	Tennessee Board of Regents
SUBJECT:	Systemwide Rules for Student Conduct and Disciplinary Sanctions
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 49-8-203(a)(1)(D)
EFFECTIVE DATES:	November 15, 2015 through June 30, 2016
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	The proposed rule makes permanent an emergency rule that changes rules for the Board of Regents institutions concerning threatening or disruptive student conduct. According to the Board, the changes were necessary to comply with a complaint settlement with the Office of Civil Rights. Specifically, the emergency rule specifies that the rule prohibiting threatening or disruptive conduct only applies when such conduct is dangerous to others and not when the conduct is dangerous only to the perpetrator. Additionally, the emergency rule adds criteria for determining whether and what type of disciplinary action should be taken against a student for threatening or disruptive conduct. The emergency rule also adds due process elements to disciplinary actions, including minimum notice requirements and timing of the assessment of any such action. The proposed rule incorporates the changes that were made by the emergency rule. The proposed rule makes some changes in terminology, such as substituting "policies" for "rules and regulations" and "colleges of applied technology" for "technology centers". The proposed rule also designates the Board's Offices of General Counsel and Academic Affairs as the entity that will review institutional student discipline policies rather than having the board conduct such reviews.

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.

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)

No Impact on Local Governments.

Department of State
Division of Publications
312 Rosa L. Parks Avenue, 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: 08-15-15
Rule ID(s): 6003
File Date: 8/18/15
Effective Date: 11/15/15

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 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.

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

Agency/Board/Commission:	Tennessee Board of Regents
Division:	System-wide Student Rules
Contact Person:	Mary G. Moody
Address:	Office of General Counsel 1415 Murfreesboro Rd., Ste. 336
Zip:	37217
Phone:	615-366-4438
Email:	Mary.Moody@tbr.edu

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**
0240-02-03	Student Conduct and Disciplinary Sanctions
Rule Number	**Rule Title**
0240-02-03-.01	Institution Policy Statement
0240-02-03-.02	Disciplinary Offenses
0240-02-03-.03	Academic and Classroom Misconduct
0240-02-03-.04	Disciplinary Sanctions
0240-02-03-.05	Traffic and Parking
0240-02-03-.06	Disciplinary Procedures

RULES
OF
TENNESSEE BOARD OF REGENTS

CHAPTER 0240-02-03
STUDENT CONDUCT AND DISCIPLINARY SANCTIONS

0240-02-03-.01 INSTITUTION POLICY STATEMENT.

(1) Students enrolled in postsecondary educational institutions are citizens of their civic communities as well as the academic community. As such they are expected to conduct themselves as law-abiding members of each community at all times. Admission to an institution of postsecondary education carries with it special privileges and imposes special responsibilities apart from those rights and duties enjoyed by non-students. In recognition of the special relationship that exists between the institution and the academic community which it seeks to serve, the Tennessee Board of Regents ("TBR" or "the Board") has authorized the presidents of the institutions and directors of the ~~technology centers~~ **colleges of applied technology** under its jurisdiction to take such action as may be necessary to maintain campus conditions and preserve the integrity of the institution and its educational environment.

(2) Pursuant to this authorization and in fulfillment of its duties to provide a secure and stimulating atmosphere in which individual and academic pursuits may flourish, the TBR has developed the following regulations, which are intended to govern student conduct on the several campuses under its jurisdiction. Each institution under the jurisdiction of the TBR is directed to implement policies subject to, and consistent with, these regulations. In student discipline policies, each institution may ~~expand on~~ **supplement** these regulations, subject to ~~Board~~ **prior review and** approval **by the TBR Offices of General Counsel and Academic Affairs**. In addition, students are subject to all federal, state and local laws and ordinances. If a student's violation of such laws or ordinances also adversely affects the institution's pursuit of its educational objectives, the institutions may enforce their own ~~regulations~~ **policies** regardless of the status or outcome of any external proceedings instituted by other civil or criminal authorities.

(3) For the purpose of these regulations, a "student" shall mean any person who is admitted and/or registered for study at a TBR institution for any academic period. This shall include any period of time following admission and/or registration, but preceding the start of classes for any academic period. It will also include any period which follows the end of an academic period through the last day for registration for the succeeding academic period, and during any period while the student is under suspension from the institution. ~~Finally,~~ **"Student"** ~~"student"~~ shall also include any person subject to a period of suspension or removal from campus as a sanction which results from a finding of a violation of the **policies and** regulations governing student conduct. Students are responsible for compliance with the Rules of Student Conduct and with similar institutional policies at all times.

(4) Disciplinary action may be taken against a student for violation of the **policies and** regulations which occur on institutionally owned, leased or otherwise controlled property, while participating in international or distance learning programs, and off campus, when the conduct impairs, interferes with, or obstructs any institutional activity or the mission, processes, and functions of the institution. ~~Institutions may enforce their own regulations regardless of the status or outcome of any external proceedings instituted in any other forum, including any civil or criminal proceeding.~~

Authority: T.C.A. §§ 4-5-101 et seq. and 49-8-203. Administrative History: Repeal of all rules by Public Chapter 261; effective July 1, 1983. New rule filed April 28, 1983; effective July 13, 1983. Amendment filed August 28, 1984; effective November 13, 1984. Amendment filed November 12, 2008; effective March 30, 2009. Repeal and new rule filed August 10, 2011; effective January 29, 2012.

0240-02-03-.02 DISCIPLINARY OFFENSES.

(2) Institutions shall adopt and publish a non-exclusive list, providing notice of offenses for which both individuals and organizations may be subject to disciplinary action. The list may include any appropriate offense given the specific needs of the individual institution, subject to prior review and approval ~~of the Board~~ **by the TBR Offices of General Counsel and Academic Affairs.** Institutions are pre-authorized to implement any or all of the disciplinary offenses, in the form set forth immediately below, without

need for prior review or approval ~~by the Board~~ **by the TBR Offices of General Counsel and Academic Affairs.**

(a) **Threatening or** Disruptive Conduct ~~Dangerous to Self or Others~~. Any conduct, or attempted conduct, which **poses a threat to the safety of others or where the student's behavior is disruptive of the institution's learning environment;** ~~constitutes a danger to any person's health, safety, or personal well-being, including, but not limited to, the following:~~

~~1. Physical and/or verbal abuse,~~

~~2. Threats and/or intimidation,~~

~~3. Harm inflicted on self;~~

(r) Violation of General **Policies** ~~Rules and Regulations~~. Any violation of the general **policies** ~~rules and regulations~~ of the institution as published in an official institutional publication, including the intentional failure to perform any required action or the intentional performance of any prohibited action;

(t) Violations of State or Federal Laws. Any violation of state or federal laws or regulations proscribing conduct or establishing offenses, **if a student's violation of such laws or regulations also adversely affects the institution's pursuit of its educational** objectives ~~which laws and regulations are incorporated herein by reference~~;

(v) Sexual **Misconduct** ~~Battery or Rape~~. Committing any act of sexual **misconduct** ~~battery or rape~~ as defined by **TBR Policy 6:03:00:00** ~~state law~~;

(w) Harassment or Retaliation. Any act by an individual or group against another person or group in violation of TBR policies, as well as federal and/or state laws prohibiting discrimination, including, but not limited to, TBR policies 5:01:02:00,**(F), 6:01:00:00, 6:02:00:00,** ~~2:02:10:01~~ and TBR Guideline P-080;

(y) Unauthorized Duplication or Possession of Keys. Making, causing to be made or the possession of**, with the intent to use or make available for use by others,** any key for an institutional facility without proper authorization;

(3) Disciplinary action may be taken against a student for violations of the foregoing regulations **or institutional policies** which occur at or in association with enrollment at an institution governed by the TBR for any academic period. Each student shall be responsible for his/her conduct from the time of application for admission through the actual awarding of a degree including periods prior to or between semesters. Conduct occurring while a student is registered or enrolled at the institution, but not discovered until after **the student leaves the institution, including after** the awarding of a degree is actionable under these provisions and may result in the retroactive application of a disciplinary sanction. Should a student withdraw from the institution with disciplinary action or academic misconduct action pending, the student's record may be encumbered by the appropriate institutional office until the proceedings have been concluded.

Authority: T.C.A. §§ 4-5-101 et seq., 49-7-123(a)(1) and 49-8-203. Administrative History: Repeal of all rules by the Public Chapter 261; effective July 1, 1983. New rule filed April 28, 1983; effective July 13, 1983. Amendment filed August 28, 1984; effective November 13, 1984. Amendment filed May 13, 1991; effective August 28, 1991. Amendment filed July 3, 1996; effective November 28, 1996. Amendment filed November 20, 1996; effective March 28, 1997. Amendment filed February 18, 1999; effective June 28, 1999. Amendment filed August 11, 2004; effective December 29, 2004. Amendments filed November 12, 2008; effective March 30, 2009. Repeal and new rule filed August 10, 2011; effective January 29, 2012.

0240-02-03-.03 ACADEMIC AND CLASSROOM MISCONDUCT.

(1) The instructor has the primary responsibility for maintenance of academic integrity and controlling classroom behavior, and can order the temporary removal or exclusion from the classroom of any student engaged in disruptive conduct or conduct that violates ~~the general~~ **these** rules**,** ~~and regulations~~ **or policies** of the institution**,** for each class session during which the conduct occurs. Extended or permanent

exclusion from the classroom, beyond the session in which the conduct occurred, or further disciplinary action can be effected only through appropriate procedures of the institution.

(4) Disruptive behavior in the classroom may be defined as, but not limited to, behavior that obstructs or disrupts the learning environment (e.g., offensive language, harassment of students and professors, repeated outbursts from a student which disrupt the flow of instruction or prevent concentration on the subject taught, failure to cooperate in maintaining classroom decorum, etc.), text messaging, and the continued use of any electronic or other noise or light emitting device which disturbs others. ~~(e.g., disturbing noises from beepers, cell phones, palm pilots, lap-top computers, games, etc.)~~

Authority: T.C.A. §§ 4-5-101 et seq. and 49-8-203. Administrative History: Repeal of all rules by Public Chapter 261; effective July 1, 1983. New rule filed April 28, 1983; effective July 13, 1983. Amendment filed August 28, 1984; effective November 13, 1984. Amendment filed August 11, 2004; effective December 29, 2004. Repeal and new rule filed August 10, 2011; effective January 29, 2012.

0240-02-03-.04 DISCIPLINARY SANCTIONS.

(1) Institutions shall adopt and publish a policy, providing notice of potential disciplinary sanctions applicable to both individuals and organizations. The policy may include any appropriate sanction, given the specific needs of the individual institution, subject to prior review and approval **by the TBR Offices of General Counsel and Academic Affairs** ~~of the Board~~. Institutions are pre-authorized to implement any or all of the sanctions, in the form set forth in sub-section (2) below, without need for prior review or approval ~~by the Board~~. Upon a determination that a student or student organization has violated any of the disciplinary offenses set forth in these regulations, institutional disciplinary policies, or the general policies of an institution, disciplinary sanctions may be imposed, either singly or in combination, by the appropriate institution or school officials.

(2) Definition of Sanctions:

(m) **Interim Involuntary withdrawal or** Suspension. As a general rule, the status of a student or student organization accused of violation of these regulations **or institutional policies** should not be altered until a final determination has been made in regard to the charges. However, **interim involuntary withdrawal or** suspension, pending the completion of disciplinary procedures, may be imposed upon a finding by the appropriate institutional official that the ~~continued presence of the accused on campus constitutes an immediate threat to the physical safety and well-being of the accused,~~ **conduct, or attempted conduct of the student poses a direct threat to the safety of** any other member of the institution, its guests, property, or ~~substantial disruption of classroom~~ **the student's behavior is materially and substantially disruptive of the institution's learning environment**, or other campus activities. In any case of **interim involuntary withdrawal or** suspension, the student, or student organization, shall be given an opportunity at the time of the decision, or as soon thereafter as reasonably possible, to contest the suspension;

(n) Housing Probation. Continued residence in campus or student housing may be conditioned upon adherence to these regulations as well as institutional housing **policies** ~~regulations~~. Any resident placed on housing probation will be notified in writing of the terms and length of the probation. Probation may include restrictions upon the activities of the resident, including any other appropriate special condition(s);

~~(3) The president/director of each institution is authorized, at his or her discretion, to intervene in order to negotiate a mutually acceptable resolution to any disciplinary proceeding, or, subsequently, to convert any sanction imposed to a lesser sanction, or to rescind any previous sanction, in appropriate cases.~~

Authority: T.C.A. §§ 4-5-101 et seq. and 49-8-203. Administrative History: Repeal of all rules by Public Chapter 261; effective July 1, 1983. New rule filed April 28, 1983; effective July 13, 1983. Amendment filed August 28, 1984; effective November 13, 1984. Amendment filed August 11, 2004; effective December 29, 2004. Amendments filed November 12, 2008; effective March 30, 2009. Repeal and new rule filed August 10, 2011; effective January 29, 2012.

0240-02-03-.05 TRAFFIC AND PARKING.

(1) General: Institutions governed by the TBR shall adopt institutional policies governing traffic and parking on their respective campuses. The purpose of these **policies** ~~regulations~~ shall be to facilitate the orderly and efficient flow of traffic on those campuses, to provide a safe atmosphere for both pedestrians and motor vehicle operators, and to provide order with regard to parking within limited space. Institutional policies enacted in compliance with this rule shall be subject to prior review and approval of the TBR. Once adopted, such policies shall be published, at least annually, and, as appropriate, through signage, traffic/parking handbooks, student/faculty handbooks and institutional websites.

Authority: T.C.A. §§ 4-5-101 et seq. and 49-8-203. Administrative History: Original rule filed August 10, 2011; effective January 29, 2012.

0240-02-03-.06 DISCIPLINARY PROCEDURES

(1) General: Institutions governed by the TBR, in the implementation of TBR **policies** ~~regulations~~ pertaining to discipline and conduct of students, shall insure the constitutional rights of students by affording a system of constitutionally and legally sound procedures which provide the protection of due process of law. In furtherance of this mandate, all TBR institutions shall enact policies setting forth the disciplinary procedures for the institution. All such policies shall be enacted in compliance with this rule, TBR Policy 3:02:01:00, and applicable state and federal law. All policies adopted pursuant to this rule shall be subject to prior review and approval ~~by the Board of Regents~~. Once adopted or amended, all disciplinary procedures shall be affirmatively communicated to the faculty, staff, and students of the institution as well as published in appropriate websites, handbooks, or manuals.

(2) Contested Case Procedure: All cases which may result in: (a) suspension or expulsion of a student~~, or student organization,~~ from the institution for disciplinary reasons, or (b) revocation of registration of a student organization, is subject to the contested case provisions of the ~~T~~**Tennessee** Uniform Administrative Procedures Act (~~T~~UAPA), T.C.A. §§ 4-5-301 et seq., and shall be processed in accord with the Uniform Contested Case procedures adopted by the Board of Regents, unless the student or organization, after receiving written notice, waives those procedures and elects to have the case disposed of in accord with institutional procedures or waives all right to contest the case under any procedure. These procedures shall be described in the institution's policy.

(a) For cases which may result in Interim Involuntary Withdrawal or Suspension, the institution must incorporate the guidelines set forth herein at (6) in its decision-making processes.

(6) **Interim Involuntary Withdrawal or** Suspension Hearings: Hearings conducted with regard to **interim involuntary withdrawals or** suspensions, **imposed prior to** or pending the outcome of a disciplinary investigation or proceeding shall be conducted consistent with the minimum requirements of due process applicable to an institutional hearing, taking into account the need for a timely hearing. The evidence presented at the hearing shall be limited to that which is relevant to the basis asserted for imposition of the **interim involuntary withdrawal or** suspension.

(a) In determining whether a student should be involuntarily withdrawn or suspended for threatening or disruptive conduct, the institution shall consider the nature, duration, severity, and probability of the threat posed and/or the disruption caused by a student, relying on the best available objective evidence and, if applicable and obtainable, the most current medical evidence.

(b) The institutions shall also determine whether reasonable modifications of its policies, practices, or procedures could sufficiently mitigate the risk.

(c) Absent exigent circumstances creating an imminent risk or harm, the assessment will be made prior to a decision to involuntarily withdraw or suspend based on the threat he or she poses to others.

(d) If exigent circumstances warrant the immediate removal of a student from the institution, the student will receive, at a minimum, notice and an initial opportunity to present evidence

immediately after being placed on involuntary withdrawal, and the opportunity to initiate full due process within 30 days of the removal.

~~(8) The president /director of each institution is authorized, at his or her discretion, to intervene in order to negotiate a mutually acceptable resolution to any disciplinary proceeding, or, subsequently, to convert any finding or sanction imposed to a lesser finding or sanction, or to rescind any previous finding or sanction, in appropriate cases.~~

Authority: T.C.A. §§ 4-5-101 et seq. and 49-8-203. Administrative History: Original rule filed August 10, 2011; effective January 29, 2012.

The vote by the Agency on these rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Governor Haslam				X	
Dr. Russ Deaton				X	
Gregory Duckett	X				
Darrell Freeman	X				
Tom Griscom	X				
Commissioner Julius Johnson				X	
Fran Marcum	X				
Commissioner Candice McQueen				X	
Barbara Prescott	X				
Rebecca Reeves	X				
Emily Reynolds	X				
Howard Roddy	X				
Leigh Shockey	X				
Parker Smith	X				
Johnny Stites	X				
Robert Thomas	X				
Danni Varlan	X				
Dottye Webb	X				

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Tennessee Board of Regents on 06-19-15, 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.

MICHAEL SHEEN
STATE OF TENNESSEE NOTARY PUBLIC
COUNTY OF SUMNER

Date: July 22, 2015

Signature: Mary G Moody

Name of Officer: Mary G. Moody

Title of Officer: General Counsel & Board Secretary

Subscribed and sworn to before me on: July 22, 2015

Notary Public Signature:

My commission expires on: 2-6-17

Tennessee Board of Regents Rules
0240-02-03 Student Conduct and Disciplinary Sanctions
0240-02-03-.01 Institution Policy Statement
0240-02-03-.02 Disciplinary Offenses
0240-02-03-.03 Academic and Classroom Misconduct
0240-02-03-.04 Disciplinary Sanctions
0240-02-03-.05 Traffic and Parking
0240-02-03-.06 Disciplinary Procedures

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

7/21/2015
Date

Department of State Use Only

Filed with the Department of State on: 8/18/15

Effective on: 11/15/15

Tre Hargett
Tre Hargett
Secretary of State

RECEIVED
2015 AUG 18 PM 1:09
SECRETARY OF STATE
PUBLICATIONS

G.O.C. STAFF RULE ABSTRACT

BOARD:	State Board of Equalization
SUBJECT:	Contested Case Procedures; Fees
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 67-1-305
EFFECTIVE DATES:	November 22, 2015 through June 30, 2016
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	The rulemaking hearing rule require taxpayers, agents, and practitioners to use electronic filing when filing property tax appeals on more than three parcels in a given year. Electronic filing may be excused based on demonstrated hardship. The current rules set the fee to defray the expense of processing property tax appeal case documents at $2.00 for electronic filings and $7.00 for paper filings. The rulemaking hearing rule sets the processing fee at $7.00 for both electronic and paper filings. The rule change does not affect the fee exemption for certain homeowners who are 65 or more years of age.

Public Hearing Comments

The Board received public hearing comments on this rule as summarized, with agency response below:

Several registered agents expressed concern about taxpayers that may not have the means or knowledge to complete an electronic filing. Agency Response: The Board proposed the possible alternative of granting an exception from the e-filing requirement in cases of demonstrated hardship.

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.

The Board has reviewed these amendments for impact on small business and determined the impact would be negligible. This conclusion is based on the following findings or assumptions:

(1) The amendment to Rule 0600-01-.03 gives affected parties the option to request an exception from the e-filing requirement based on demonstrated hardship.
(2) The amendment to Rule 0600-01-.17 will benefit most small businesses by reducing the initial processing fee from $9 to $7.

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)

There is no impact on local government.

Department of State
Division of Publications
312 Rosa L. Parks Avenue, 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: 08-19-15
Rule ID(s): 6004
File Date: 9/24/15
Effective Date: 11/22/15

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:	State Board of Equalization
Division:	
Contact Person:	Kelsie Jones, Executive Secretary
Address:	312 Rosa L. Parks Ave., Ste. 900
Zip:	37243-1102
Phone:	615-747-5379
Email:	kelsie.jones@cot.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**
0600-01	Contested Case Procedures
Rule Number	**Rule Title**
0600-01-.03	Initiating a Contested Case
0600-01-.17	Fees

Rule 0600-01-.03 Initiating a Contested Case is amended by adding the following language at the end of paragraph (1)(d):

Unless excused on the basis of demonstrated hardship, an electronic filing must be used by any taxpayer filing appeals on more than three parcels in a given year, or by any agent or practitioner filing appeals on more than three parcels in a given year.

Authority: T.C.A. §§ 67-1-305 and 67-5-1412

Rule 0600-01-.17 Fees is amended by deleting the existing language in paragraph (2) and by substituting instead the following:

CONTESTED CASE PROCEDURES

Rule 0600-01-.03(1)(d) is amended by making the following changes:

(d) filing data in such computer-readable format as the Board may authorize, subject to technical requirements approved by the Board. Unless excused on the basis of demonstrated hardship, an electronic filing must be used by any taxpayer filing appeals on more than three parcels in a given year, or by any agent or practitioner filing appeals on more than three parcels in a given year.

Rule 0600-01-.17(2) is amended by deleting it in its entirety and substituting the following:

~~(2) The processing fee shall be two dollar ($2) per parcel for any appeal filed in electronic format and seven dollars ($7) per parcel for each appeal using the paper form otherwise required by these rules. The fee for a paper filing shall be in addition to any fee previously paid for an electronic filing for the same parcel.~~

(2) The initial processing fee shall be seven dollars ($7) per parcel.

The initial processing fee shall be seven dollars ($7) per parcel.

Authority: T.C.A. §§ 67-1-305 and 67-5-1501

* 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)
Bennett				X	
Burchett				X	
Hargett	X				
Lillard	X				
Roberts	X				
Tarwater	X				
Wilson	X				

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

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: *11/10/2014*

Rulemaking Hearing(s) Conducted on: (add more dates). *01/05/2015*

Date: 8-7-15

Signature: Kelsie Jones

Name of Officer: Kelsie Jones

Title of Officer: Exec. Sec. SBOE

SHIRLEY MARRIOTT STATE OF TENNESSEE NOTARY PUBLIC DAVIDSON COUNTY

Subscribed and sworn to before me on: 07 August 2015

Notary Public Signature: Shirley Marriott

My commission expires on: 08 May 2018

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

Herbert H. Slatery III

Herbert H. Slatery III
Attorney General and Reporter

8/19/2015

Date

RECEIVED
2015 AUG 24 AM 9:42
SECRETARY OF STATE
PUBLICATIONS

Department of State Use Only

Filed with the Department of State on: 8/24/15

Effective on: 11/22/15

Joe Wright

Tre Hargett
Secretary of State

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Intellectual and Developmental Disabilities
SUBJECT:	Administration of Medication By Unlicensed Personnel
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section
EFFECTIVE DATES:	November 26, 2015 through June 30, 2016
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	The rulemaking hearing rule revises the requirements for training unlicensed personnel to administer medication. Specifically, the rulemaking hearing rule: extends the certification period from two years to three years: increases the number of times that a person can take the test to unlimited, but after two failing attempts the cost will move to the provider agency that employs the person; and replace the eight-hour recertification training by online material followed by a knowledge and skills competency evaluation.

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.

See Attached.

#	Comment	Source	Policy/Rule/TCA Reference	DIDD Response
1.	I agree with what every one of these ladies has said. The six month waiting period is not only difficult for the staff person because they lose that information over the six-month period, but if they can't give medications, they will also likely lose their job. And with staff shortages across the state, and the grade system the way it is, and us having to pay staff what we can pay them, we really don't need to lose good staff because of that particular regulation. Reiterating what they had to say about only the three attempts to pass the course. I'm a registered nurse. The board of nursing, after failing two times, any subsequent retesting is on a case-by-case basis, and there is no set limit. I understand that there's a cost involved every time someone has to take the test again. Perhaps, the recommendation would be after the second attempt, that the cost goes to the provider. The provider might have very good reasons where you've got a good caregiver but, for whatever reason, they're not the best test takers. I have peers that it took them more than a couple of times to pass the boards. Great nurses, great on-the-spot critical thinking, just not very good test takers, and they get a little nervous. I think when the required fiscal impact study is done, you'll find that that is a – that will	Betty McNeely, Journeys in Community Living, and I also represent the TNCO regulatory committee Tonya Copeland with Evergreen Life Services and TNCO Melanie Keller, Meritan & TNCO Cindy Graves, Impact Centers & TNCO **Comments submitted in writing:** Jeanene Houston, Hilltoppers Jennifer Enderson, Emory Valley Center Piete Ferguson, RN-BC Robin Atwood, TNCO		Concur. DIDD will allow staff who has failed under the previous system to start fresh under the new system. DIDD will also remove the limit on the number of times an individual can take the exam. DIDD also concurs that after the second fail the cost should be shifted to the provider. This will be addressed in the next revision of the provider manual. Concur. Will revise to remove the six month wait period.

#	Comment	Source	Policy/Rule/TCA Reference	DIDD Response
	have an impact on costs for providing services, the costs the providers face. And another thing that will show up in the fiscal impact study is the cost of having to either take a four-day course for recertification or travel to the regional office to have the nurses test them out.	Community Services Aurelia Kanarski, Life Bridges. Damaris Betancourt, Life Bridges. Bonnie Guthrie, Lakeway Achievement Center Patricia Calfee, Life Bridges		
2.	The online training is an excellent opportunity for recertification, and I think it's great. We trust online training for all other subjects, except First Aid. And I do not understand why we can take the online training but can't take that online test. In regards to the recertification, I think that's fantastic that there is the opportunity to review online. However, I'm curious as to why the testing would have to be done by the regional nurse, as opposed to the trainer that's already been approved to teach the curriculum. There are several caregivers, several homes, agencies, that are two to three hours away from a regional office. So that is a burden on the direct support staff to	Cindy Graves, Impact Centers & TNCO Melanie Keller, Meritan &TNCO **Comments submitted in writing.** Jeanene Houston, Hilltoppers Jennifer Enderson, Emory Valley Center	TCA Title 33	Do not concur. Security of the testing process cannot be assured by permitting online testing. Thank you for the question. Concur. DIDD will remove this requirement of testing by the regional nurse from the rules.

#	Comment	Source	Policy/Rule/TCA Reference	DIDD Response
	have to travel as well as the agencies to cover that.	Phillip Garner, Buffalo River Services Robin Atwood, TNCO Damaris Betancourt, Life Bridges Patricia Calfee, Life Bridges		
3.	The Medication Administration Certification can be terminated without cause, that's in regards to the nurses that have been approved to teach. And I certainly understand any rule violations or not following policy and procedures, I just don't understand the need that they can just be terminated without cause for no reason.	Melanie Keller, Meritan &TNCO Comments submitted in writing. Jeanene Houston, Hilltoppers Nancy Thiessen, Comcare William Hubbard, Attorney Robin Atwood, TNCO		Concur. This language will be amended to allow for notice and a contested hearing.

#	Comment	Source	Policy/Rule/TCA Reference	DIDD Response
		Aurelia Kanarski, Life Bridges Bonnie Guthrie, Lakeway Achievement Center		
4.	Going back to the requirements for certified trainers, the requirement for the nurse to have a year's experience supporting people in the DID system and the one-year supervisory experience, I don't see how that has any direct correlation with somebody's ability to the teach the class and assess someone's knowledge and appropriately grade a test. Supervisory experience and DIDD experience is not necessarily pertinent to teaching curriculum.	Melanie Keller, Meritan & TNCO **Comments submitted in writing.** Jeanene Houston, Hilltoppers Jennifer Enderson, Emory Valley Center Nancy Thiessen, Comcare Robin Atwood, TNCO Aurelia Kanarski, Life Bridges. Damaris Betancourt, Life Bridges.		Do not concur. There has always been a 2 year RN experience requirement with a minimum of 1 year experience in the provision of services to people within the DIDD system. Health care supports for people supported by DIDD can be quite different from supports for people without disabilities. For training to be valid and real for the participant, the trainer must have experience and examples to use in the teaching. Without experience, the training may be more theoretical and not prepare the learners for the challenges they may face. It is a quality of training issue. A trainer must be able to control the class so each learner receives appropriate attention; therefore some supervisory experience is appropriate.

#	Comment	Source	Policy/Rule/TCA Reference	DIDD Response
5.	In regards to the CHOICES piece, it's not very clear to me if this is saying that all of the DIDD Medication Administration Rules will be applied to anyone that provides community living support through CHOICES, even if that's all that's in the home are CHOICES recipients, as opposed to a blended home with CHOICES and DIDD.	Melanie Keller, Meritan & TNCO **Comments submitted in writing.** Jeanene Houston, Hilltoppers Robin Atwood, TNCO		Medication administration is permissible by staff who are currently certified in medication administration and employed by an HCBS waiver provider who is both licensed under Title 33 AND contracted with DIDD to provide services through an HCBS waiver operated by DIDD. Staff certified in medication administration and employed by a DIDD licensed and contracted HCBS provider may administer medications to DIDD waiver participants and to CHOICES CLS participants as appropriate. This includes blended homes and homes that are comprised of CHOICES CLS residents only, so long as the provider is licensed by DIDD pursuant to Title 33, and in addition to being contracted with an MCO is contracted with DIDD for the provision of HCBS waiver services under one of the state's 1915(c) waivers and administering staff are certified in medication administration. Providers who are not both licensed by DIDD pursuant to Title 33 AND contracted with DIDD for the provision of HCBS waiver services under one of the state's 1915(c) waivers are not permitted to have unlicensed staff administer medications. All requirements of the Nurse Practice Act will apply.

#	Comment	Source	Policy/Rule/TCA Reference	DIDD Response
6.	Just a request, that when the rules are updated, when it's final, that the provider agencies be allowed to update their Medication Administration Policies to reflect the changes without having to go through the process of the Medication Administration Policy being reviewed and approved. If all that we're adding are the changes that are in the rules, it seems like that would be a long process to go through.	Melanie Keller, Meritan & TNCO **Comments submitted in writing.** Jeanene Houston, Hilltoppers Jennifer Enderson, Emory Valley Center Nancy Thiessen, Comcare Robin Atwood. Aurelia Kanarski, Life Bridges	Provider Manual 8.5.a	Do not concur. Provider manual 8.5.a Medication Administration by Unlicensed Personnel. 1. Providers shall have a medication safety policy (formerly known as medication administration policy) that is accepted by DIDD. If the only changes in the medication safety policy are the changes to the rules, DIDD review and approval will be straightforward and completed expeditiously.
7.	We strongly recommend that the Department develop a medication administration workgroup. We hope that there will be an ongoing committee appointed that will include providers, the nurse trainers, training specialists from the agencies to review curriculum on an ongoing basis, to review the rules on an ongoing basis, and to make sure the decisions are made that are based on what is actually going on in the field so that we have what Dr. Cheetham referred to as	Betty McNeely, Journeys & TNCO **Comments submitted in writing** Jeanene Houston, Hilltoppers Robin Atwood, TNCO		Duly noted. DIDD will take under advisement.

#	Comment	Source	Policy/Rule/TCA Reference	DIDD Response
	"ongoing quality improvement" in the program.			
8.	Under medication variances, there is a comment about the right documentation being added to the rights under what would be reported as a medication variance. A documentation error is a documentation error, but somebody simply initialing under the wrong boxes, that's quickly noted and corrected, and should not be included as a medication variance.	Melanie Keller, Meritan **Comments submitted in writing.** Jeanene Houston, Hilltoppers, Inc. Nancy Thiessen, Comcare. Robin Atwood, TNCO Aurelia Kanarski, Life Bridges.		Do not concur. This requirement came from materials from the Regulatory Relief work group and was accepted. The purpose of medication variance data is to continuously improve the safe administration of medications.
9.	Another comment in regards to the training and the 20-hour timeframe. I am licensed to teach med-admin through DIDD and have also taught through DCS. DCS has a 4-hour training, as opposed to a 20-hour training. For me trying to process the difference between administering the medication to a 16-year old child, or when they turn 18, now you have to have 20 hours to do what you've been doing all along, I just have a difficult	Melanie Keller, Meritan Tonya Copeland, Evergreen Life Services & TNCO **Comments submitted in writing.**		Do not concur. There are different requirements in a home health setting where the person or family member is trained on some procedure and what is permitted under the exemption for medication administration. The standards to which the person who is trained are different. The curriculum revisions had to be approved by the board of nursing and the not less than

#	Comment	Source	Policy/Rule/TCA Reference	DIDD Response
	time processing that. I have gone in and taught an 80 year old person, without even a high school education, how to catheterize, how to administer IV antibiotics, how to check blood sugars and administer insulin, and you do that in one to two visits of a couple of hours apiece. So even the 20 hours, to me, seems excessive for what we're able to do on a day-to-day basis. Reminder: a fiscal impact study must be completed on this and other changes to the rules/curriculum.	Jeanene Houston, Hilltoppers Robin Atwood, TNCO		20 hours was part of the existing curriculum. In regards to the fiscal impact, that is duly noted and DIDD will file the statement with the final version of the rules.
10.	I would like to add to the fact that supervisory experience to be a trainer—I do not feel that is a necessity, and should not be a requirement for the trainers just because that's not something that they have to have in order to be able to teach a class and administer tests.	Aurelia Kanarski, Life Bridges **Comments submitted in writing**. Jennifer Enderson, Emory Valley Center Jeanene Houston, Hilltoppers.		Do not concur. A trainer must be able to control the class so each learner receives appropriate attention; therefore some supervisory experience is appropriate.
11.	I would like to suggest oxygen administration be added to the curriculum for medication administration, and no longer require a delegation for unlicensed staff to administer. The administration of oxygen is much less of a potential danger to our consumers than	Steve Leach, Frontier Health Comments submitted in writing		Department of Health rules explicitly prohibit oxygen administration from being part of medication administration by unlicensed personnel currently permitted under State law (see 1200-20-12-.05(1)(g). To be clear, this is a task

#	Comment	Source	Policy/Rule/TCA Reference	DIDD Response
	some of the oral medications unlicensed staff provides, and I cannot understand why a delegation is required for oxygen to be administered. I understand oxygen given in too large a dose to someone who has emphysema could have serious consequences, but then giving too much of any med could be dangerous and potentially lethal to the recipient. I do not see a level of clinical expertise in oxygen administration that would require a delegation, and would recommend it be included in the curriculum for medication administration for unlicensed personnel.			that a nurse can individually delegate to an unlicensed person; however it cannot be performed as part of the medication administration certification, absent a change in DOH rules. Additional research would also be required to determine whether changes would also be required in the law.
12.	1) The Regulatory Relief Task force, which I was part of, first raised this issue 3 years ago. It is disappointing that it took so long for changes to be made, and that several deadlines were missed. 2) The original goal behind the proposal for the curriculum change was to simplify it and reduce the cost, in part by making it 2 days/16 hours. Again it is disappointing this has not happened.	**Comments submitted in writing.** Mike McElhinney, Michael Dunn Center		In regards to points 1 and 2, your concerns are noted.
13.	Here are the parts I see issues with: Definitions: (1) "Administration does not include judgment, evaluation or assessment". Is that not the staff are doing when they have to enter a result for a PRN medication? (Especially for non-verbal clients).	**Comments submitted in writing.** Aurelia Kanarski, Life Bridges		Do not concur. To administer a PRN, a doctor's order is required identifying specific perimeters by which the medication is to be administered. This does not require judgment, evaluation or assessment.

#	Comment	Source	Policy/Rule/TCA Reference	DIDD Response
14.	0465-01-03-.09- Leave the monitoring statement as it was previously.	**Comments submitted in writing.** Aurelia Kanarski, Life Bridges Damaris Betancourt, Life Bridges		Do not concur. To ensure the person can safely administer medications, one observation of performance on the job is a minimal standard.
15.	Require DIDD to have training classes for RN's to teach classes more often or as needed.	**Comments submitted in writing.** Bonnie Guthrie, Lakeway Achievement Center		The Department must continue to operate within the budgetary appropriations that are afforded us, and at this time we would be unable to consider this request.
16.	Allowing the certification to run the whole time rather than require the staff be recertified after leaving an agency and then returning, or a refresher test not the whole 4 day class. Unreasonable.	**Comments submitted in writing.** Bonnie Guthrie, Lakeway Achievement Center		A person who holds a current certification and changes employer (i.e. one DIDD provider agency to another DIDD provider agency) would require only proof of valid certification from the former employer. The certification is for three (3) years regardless of where the person is employed.

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.

This rule should decrease by an estimated 31.6% the annual amount expended on medication administration training by small businesses who contract with the Department of Intellectual and Developmental Disabilities' and have employees that are required to complete medication administration training . This estimate is based on the total estimated annual savings of 31.6% for all the Department of Intellectual and Developmental Disabilities' service providers who have employees that are required to complete medication administration training.

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 should have no effect on local governments as the Department of Intellectual and Developmental Disabilities does not contract with local governments for the provision of services that require medication administration training.

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

For Department of State Use Only

Sequence Number: 08-33-15
Rule ID(s): 10010, 10011
File Date: 08/28/15
Effective Date: 11/26/15

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing. T.C.A. § 4-5-205

Agency/Board/Commission:	Department of Intellectual and Developmental Disabilities
Division:	
Contact Person:	Dr. Thomas Cheetham
Address:	400 Deaderick St., Citizens Plaza, 10th Fl., Nashville, TN
Zip:	37243
Phone:	615-253-6711
Email:	Thomas.cheetham@tn.gov

Revision Type (check all that apply):

___ Amendment
X New
X 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**
1200-20-12	Administration of Medication by Unlicensed Personnel to People with Mental Retardation
Rule Number	**Rule Title**
1200-20-12-.01	Repealed
through	
1200-20-12-.08	Repealed

Chapter Number	**Chapter Title**
0465-01-03	Administration of Medication by Unlicensed Personnel
Rule Number	**Rule Title**
0465-01-03-.01	Purpose
0465-01-03-.02	Definitions
0465-01-03-.03	Medication Administration Training Program
0465-01-03-.04	Approval of Unlicensed Personnel

Chapter Number	**Chapter Title**
0465-01-03	Administration of Medication by Unlicensed Personnel
Rule Number	**Rule Title**
0465-01-03-.05	Certification of Unlicensed Personnel
0465-01-03-.06	Limitations of Functions of Unlicensed Personnel
0465-01-03-.07	Provider Agency Requirements
0465-01-03-.08	Termination of Authority to Administer Medication

Chapter Number	Chapter Title
0465-01-03	Administration of Medication by Unlicensed Personnel
Rule Number	**Rule Title**
0465-01-03-.09	Monitoring of Unlicensed Personnel

RULES
OF
TENNESSEE DEPARTMENT OF ~~HEALTH~~
INTELLECTUAL AND DEVELOPMENTAL DISABILITIES

CHAPTER ~~1200-20-12~~
0465-01-03
ADMINISTRATION OF MEDICATION BY UNLICENSED PERSONNEL
~~TO PEOPLE WITH MENTAL RETARDATION~~

~~TABLE OF CONTENTS~~

~~1200-20-12-.01~~	~~Definitions~~	~~1200-20-12-.06~~	~~Provider Agency Requirements~~
~~1200-20-12-.02~~	~~Medication Administration Training Programs~~	~~1200-20-12-.07~~	~~Suspension of Authority to~~
~~1200-20-12-.03~~	~~Unlicensed Personnel~~		~~Administer Medication~~
~~1200-20-12-.04~~	~~Approval of Unlicensed Personnel~~	~~1200-20-12-.08~~	~~Monitoring of Unlicensed Personnel~~
~~1200-20-12-.05~~	~~Limitations on Functions of Unlicensed Personnel~~		

TABLE OF CONTENTS

0465-01-03-.01	Purpose	0465-01-03-.06	Limitations on Functions of Unlicensed Personnel
0465-01-03-.02	Definitions		
0465-01-03-.03	Medication Administration Training Program	0465-01-03-.07	Provider Agency Requirements
0465-01-03-.04	Approval of Unlicensed Personnel	0465-01-03-.08	Termination of Authority to Administer Medication
0465-01-03-.05	Certification of Unlicensed Personnel		
		0465-01-03-.09	Monitoring of Unlicensed Personnel

0465-01-03-.01 Purpose:

The purpose of these rules is to amend the former rules pertaining to Administration of Medication by Unlicensed Personnel and establish new rules in light of the Department of Intellectual and Developmental Disabilities' current organization, structure and resources.

0465-01-03-.02 ~~1200-20-12-.01~~ DEFINITIONS: As used in these rules, the terms below shall have the following meanings ascribed to them.

(1) "Administration of ~~medications~~Medications" shall mean providing for the ingestion, application, injection of medications allowed by these rules~~;~~, inhalation or rectal or vaginal insertion of medication, including over the counter and prescription drugs, according to the written or printed directions of the ~~attending physician~~ prescribing practitioner~~;~~ ~~or other authorized practitioner or as written on the prescription label~~ and making a written record thereof with regard to each medication administered, including the time and amount taken~~;~~. ~~but a~~ Administration does not include judgment, evaluation or assessment.

~~(2) "Adult day programs" shall mean any program licensed or contracted by the Division of Mental Retardation Services to provide day activities to people with mental retardation over eighteen years of age. Such services include day habilitation, follow along, supported employment and community participation.~~

(2) "Certification" shall mean the period of time an unlicensed staff is authorized to administer medications in accordance with these rules.

(3) "Certified Personnel" authorized to administer medications shall mean an employee who:

(a) Is at least 18 years of age;

(b) Has met all requirements to be an employee of a provider agency;

(c) Is able to effectively read, ~~wright~~ write and communicate verbally in English ~~and~~ as well as read and understand instructions, perform record-keeping duties and write reports;

(d) Has successfully completed the DIDD medication administration training program; and

(e) Holds current certification to administer medications according to the provisions of these rules.

(4) ~~(3)~~ "Competency testing" shall mean a written ~~exam~~ examination and a practical demonstration of skills that measure basic ~~competency~~ proficiency in medication administration.

~~(4) "The Board" shall mean the Tennessee Board of Nursing~~

(5) "Curriculum" shall mean ~~a detailed course outline, description or syllabus submitted to the Department as part of the approval process of an entity, nursing agency, health care facility or Division sponsoring a medication administration course. At a minimum, a curriculum for approval or re approval shall contain the following:~~ the current course training program 'Medication Administration for Unlicensed Personnel'.

Formatted: Font: Not Italic

Formatted: Font: Not Italic

~~(a) title~~

~~(b) names and authors~~

~~(c) specific course objectives~~

~~(d) units to be covered in the course~~

~~(e) hours to be spent in each unit~~

~~(f) the methods of instruction~~

~~(g) a description of the practical training to be provided~~

~~(h) a written test to measure competency in medication administration; and~~

~~(i) a description of a test to measure competency through a practical demonstration of each required skill~~

(6) "Department" shall mean the Tennessee Department of ~~Health~~ Intellectual and Developmental Disabilities, also referred to as DIDD.

~~(7) "Division" shall mean the Division of Mental Retardation Services of the Department of Mental Health and Mental Retardation.~~

(7)~~(8)~~ "Drugs or Medications" shall mean substances intended for use in diagnosis, care, mitigations, treatment, or prevention.

(8)~~(9)~~ "Employee" shall mean an individual who is unlicensed and is employed ~~by~~ or receives payment through a provider agency contracting with the Department.

(9)~~(10)~~ "Medication ~~Administration Error~~ Variance" shall ~~mean that a drug was not given in the right amount, in the right strength, at the right time, by the correct route or methods of administration, or to the right individual. Medication administration error shall also mean that a medication was ordered and not administered occur at~~mean any time a medication is given in a way that is inconsistent with how it was

ordered by the prescribing practitioner and in accordance with the "Eight Rights" (i.e. right dose, right drug, right route, right time, right position, right texture, right person and right documentation).

~~(11) "Non-injectable medications" shall mean any medication that is not administered by the intradermal, subcutaneous, intramuscular or intravenous route. This includes medications that are prepackaged and premeasured for oral medication, medications administered through gastrostomy and jejunostomy feeding tubes, prescribed topical, otic, nasal, inhaled medications, opthalmic medications, and rectal and vaginal suppository medications.~~

(10)~~(12)~~ "Injectable Medications" shall mean ~~allowed injectable medications which are only to include those medications given routinely by an injectable method to assure the continuation of a state of well-being. These medications are limited to a person requiring insulin injections on a daily basis or one time administration of life saving injections, such as EpiPens for severe allergies~~ medications given by intradermal, subcutaneous, intramuscular or intravenous routes. Injectable medications that may be given by certified unlicensed personnel are limited to routine insulin injections ~~(with additional training)~~that are pre-drawn/prepared by the pharmacy and ordered on a regular basis (with additional training) or injectable epinephrine (EpiPen). ~~Routine insulin injections shall mean insulin that is pre-drawn/prepared by the pharmacy and is ordered on a regular basis. Administration of sliding scale insulin, mixing of insulin's, or any administration requiring assessment and judgment is not allowed under the exemption.~~

~~(13) "Licensed Professional Nurse" shall mean a registered professional nurse who is licensed by the State of Tennessee.~~

(11)~~(14)~~ "Monitoring" shall mean periodic review, observation, direction, and evaluation of ~~an~~ a certified unlicensed ~~individual's~~ staff's knowledge, skills, and performance related to the functions and activities provided for in these rules.

(12) "Participant Record" shall mean the official record from the Department containing all information relative to class participation. Participant record is the only acceptable documentation for proof of certification to administer medications under the exemption.

(13)~~(15)~~ "~~Program coordinator~~ RN Trainer" shall mean ~~the licensed professional~~ a registered nurse ~~in charge of the~~ holding an unencumbered license in the State of Tennessee and who is trained by the Department to provide medication administration training ~~program~~ in accordance with the curriculum and these rules.

~~(1)~~ (14)~~(16)~~ "~~A p~~Person (receiving services)" shall mean any person with ~~mental retardation~~ intellectual and/or developmental disabilities ~~residing in residential settings or any adult day program funded by the Division of Mental Retardation Services~~ who is enrolled in a DIDD home and community based waiver program and any person served by an agency that is both licensed under Title 33 and under contract with DIDD to provide residential or day services for people with intellectual and/or developmental disabilities, including persons served in the CHOICES program.

Formatted: Indent: Left: 0.44", No bullets or numbering

(15)~~(17)~~ "Provider Agency" shall mean a private non-profit or for-profit entity ~~licensed by or~~ under agreement/contract with the ~~State~~ Department to provide services to individuals with ~~mental retardation~~intellectual/ and/or developmental disabilities.

~~(18) "Residential settings" shall mean any program licensed by or contracting with the Division to provide residential services to children or adults with mental retardation. Such services include supported living environments, group homes, and family based residential programs as defined in the Division of Mental Retardation's Operations Manual.~~

~~(19) "Supervision" shall mean the initial, as well as subsequent, verification of an unlicensed person's knowledge and skills in the performance of a specific function, as well as during training activities provided for in these rules.~~

~~(20) "Two year medication examination" shall mean the examination administered by the Department or its designee every two years to unlicensed staff approved to administer medications.~~

~~(21) "Unlicensed personnel authorized to administer medications" shall mean a person who~~

~~(a) is at least eighteen years of age~~

~~(b) has not been convicted of a crime rationally related to his or her employment,~~

~~(c) speaks, reads, writes and understands the English Language,~~

~~(d) has successfully completed an approved medicatio n administration training program,~~

~~(e) is approved to administer medications by both the Department and the provider agency by which the unlicensed personnel is employed, and~~

~~(f) maintains such approved status according to the provisions of these rules.~~

~~(22) "Testing entity" shall mean an agency or individual selected by the Department to administer medication administration competency tests, upon completion of a medication administration training program.~~

(16) "Termination" shall mean the permanent revocation of certification and authority for:

(a) Unlicensed staff to administer medication or

(b) RN trainer to train the curriculum

Authority: T.C.A. §§4-5-202, 33-1-302, 33-1-303, 33-1-305, 33-1-309 and 68-1-904. **Administrative History:** Original rule filed August 21, 1998; effective November 4, 1998. ~~*November 4, 1998.*~~

Formatted: Font: Not Italic

Formatted: Font: Not Italic

Formatted: Indent: Left: 0", Space Before: 0 pt

0465-01-03-.03~~1200-20-12-.02~~ Medication Administration **Training Program**

~~(1) Approval of Training Programs~~

~~(a) In cooperation with appropriate agencies or advisory bodies, the Department shall develop or approve initial training curricula and competency evaluation procedures for those unlicensed personnel who administer medications. A qualified testing entity or educational institution may apply to the Department for approval to conduct a Medication Administration Training Program. Upon approval of the curriculum, the Department or its designee may contract with a private provider or instructor to provide such training and administer such competency testing. The Department shall maintain a list of approved medication administration contractors for training.~~

~~(b) Requests for the approval of a medication administration training program shall be submitted to the Department and include the following:~~

~~1. name, address and telephone number of the agency offering the program;~~

~~2. the program coordinator's name, address, RN license number, and verification of a minimum of two years experience, at least one of which must be in the provision of services to people with developmental disabilities and mental retardation;~~

~~3. statement of course objectives;~~

~~4. description of course content specifying the number of hours and key topics to be~~

~~covered;~~

~~5. a test which measures competency through a practical demonstration of the required skill; and~~

~~6. a written test to reflect and measure the skills and requirements of these rules.~~

~~(c) The Department must respond to a request for approval of a medication administration training program with either a notice of the action taken or a request for additional information within 90 days of the receipt of the application for medication administration course approval.~~

(1)~~(2)~~ ~~Course Content~~ Medication Administration Curriculum developed and administered by the Department.

The course curriculum should cover, at a minimum, the following: ~~topics:~~

~~(a) introduction to pharmacology;~~

(a)~~(b)~~ Legal and ethical aspects of medication administration;

(b)~~(c)~~ State and federal regulations regarding medications;

(c)~~(d)~~ Terminology, abbreviations and measurements;

(d)~~(e)~~ Administration of medications;

(e)~~(f)~~ Types of medications, ~~their~~ indications, actions, ~~interactions,~~ ~~potential~~ side effects~~,~~ ~~adverse reactions,~~ and appropriate emergency response;

(f)~~(g)~~ Documentation ~~and record keeping;~~ and

(g)~~(h)~~ Storage ~~and disposal~~ of medications

(2)~~(3)~~ ~~Instructors~~ Certified RN Trainers

(a) The instruction of medication administration must be performed by a ~~licensed professional~~ Rregistered Nnurse licensed and registered in the State of Tennessee ~~and~~ who has:

(1) ~~who possesses~~ A minimum of two (2) years ~~of~~ RN experience~~;~~
(2) A minimum ~~at least~~ of one (1) year experience ~~of which must be~~ in the provision of services to people within the DIDD ~~mental retardation/developmental disabilities~~ system~~.~~; and
(3) ~~Training personnel who may supplement the program coordinator including, but not limited to, physicians, licensed practical nurse, pharmacists, and developmental disability administrators which are subject to these rules. Supplemental training personnel must have at least two (2) years of experience in their respective fields.~~ Experience as a direct supervisor responsible for oversight and management of staff.

(b) RN Trainer ~~must~~ shall maintain security of all testing materials.

(c) Training for RN trainer will be provided in accordance with Departmental rules and standards.

(d) ~~The~~ Department ~~will~~ shall maintain a current database of certified RN trainers who are eligible to provide the instruction of medication administration under the exemption.

(e) ~~The Department may terminate an RN trainer's certification for non compliance with the Department's rules and standards. The RN trainer may also be terminated without cause for any reason determined by the Department.~~ The RN Trainer's authority to provide training in Medication Administration for

Unlicensed Personnel may be terminated by the Department for failure to conform and performto the standards set forth in these rules and the curriculum. Notice shall be provided to the RN Trainer by certified mail and he/she shall have the right to request an appeal hearing of the decision to terminate his/her authority to provide training, pursuant to the Tennessee Uniform Administrative Procedures Act.

(3)~~(4) Review of Courses (a)~~The Department ~~shall have the authority to review and grant approval of medication administration training programs. It is expected~~shall ~~that the training program will to keep~~ abreast of current standards and practices in the field and update the program accordingly.

(4)~~(5)~~ Competency Based Medication Administration Training Program; ~~Implementation~~

(a) The Department shall ~~assure~~ ensure that training sessions~~, each to be followed by a competency test set to measure basic competency,~~ are ~~offered at various geographic locations in the state~~ held in accordance with these rules;~~.~~

(b) ~~Approved providers of medication administration training programs must have and maintain procedures for administration, security and validation of tests, and the reporting of scores results to the Department. Such procedures must include limitations of the number of times a particular test will be used. A pool of questions may be used to develop alternative tests.~~ Provider agencies ~~must~~ shall develop and maintain a system for ensuring that any ~~staff~~ certified personnel administering medications haves current certification in Medication Administration for Unlicensed Personnel;~~.~~

(c) ~~Each private training contractor shall provide the Department with a list of all persons who have taken an approved training session and has successfully completed a competency test. Such contractor shall also provide the Department with any other pertinent information reasonably requested by the Department.~~ The Department ~~will~~ shall maintain course material for one (1) year and participant records ~~indefinitely~~for five (5) years~~.~~; and

(d) ~~Course attendance records must be maintained for a minimum of two years from the date of completion of the course and are subject to review by the Department upon request.~~ The Department ~~will~~ shall provide the agency with a participant record for each participant registered for class.

~~(e) At least 30 days before each occasion on which an approved course is to begin, sponsors of approved courses must provide written notice to the Department of the dates and location a course will be held. Medication administration training programs are subject to periodic on site review by the Department.~~

~~(f) The program coordinator shall be responsible for the completion, signing, and submission to the Department of all required documentation. A coordinator shall be responsible for ensuring that the following requirements are met:~~

~~1. course objectives are accomplished;~~

~~2. only persons having appropriate skills and knowledge are selected to conduct any part of the training;~~

~~3. each trainee demonstrates competence in medication administration through passing a written test and a practical demonstration of skills;~~

~~4. records are kept to verify the participation and performance of each trainee in each phase of the training program, the satisfactory completion of the training program by each trainee to be attested on each trainee's record, and~~

~~5. issue each trainee a letter of completion. Successful completion shall be documented by a letter provided to the employee and to the provider agency where the person is employed,~~

~~and signed by the program coordinator for the course. Such letter must contain:~~

~~(i) the name and current address of the employee;~~

~~(ii) title of the course;~~

~~(iii) the employee's date of birth and social security number;~~

~~(iv) the name(s) of the course instructor(s) and educational sponsor for the course;~~

~~(v) the provider agency with whom the person is employed or to be employed;~~

~~(vi) the date of successful completion of the course; and~~

~~(vii) provide a copy of the letter to the Department.~~

~~(6) Reporting of Competency Testing~~

~~(a) Any testing entity that administers competency testing's shall maintain a list of those who have successfully completed a competency test and shall forward a copy of such list to the provider and/or the approved training program within thirty (30) days of administration of such tests. Such testing entity shall provide additional information as required by the Department by contract with the testing entity.~~

~~(7) Denial, Suspension or Revocation of Approval to Provide Training in Medication Administration~~

~~(a) The Department shall deny, suspend, or revoke its approval of a Medication Administration Training Program for failure by the training entity to meet the requirements of this rule 1200-20-12-.02 (i.e., Approval of Training Program). Any denial, suspension, or revocation may be appealed in writing to the Commissioner of the Department of Health. Subsequent appeals shall be made pursuant to the Rules of the Department of Finance and Administration for the purchase of services and the applicable statutes.~~

~~(8) When required by a court order or settlement, documents and information relevant to such order or settlement may be reviewed by other appropriate individuals related to the litigation.~~

Authority: T.C.A. §§4-5-202, 4-5-301, 33-1-302, 33-1-303, 33-1-305, 33-1-309 and 68-1-904. **Administrative History:** Original rule filed August 21, 1998; effective November 4, 1998. ~~*November 1, 1998.*~~

0465-01-03-.04~~1200-20-12-.03 APPROVAL OF UNLICENSED PERSONNEL~~Approval of Unlicensed Personnel

(1) Any contracted DIDD provider agency employee~~e~~ing staff who ~~is~~ are not otherwise authorized by law to administer medications ~~in a mental retardation program~~ shall be allowed to perform such duties only after passing a competency testing. ~~An employee~~ Certified personnel who administers medications ~~in a program in compliance~~ within the provision of this paragraph shall be exempt from the licensing requirements of the Nurse Practice Act and the Rules of the Board of Nursing.

(2) Before administering medications, an ~~unlicensed~~ employee ~~must~~ shall ~~satisfactorily~~ successfully complete a ~~the~~ a medication administration ~~training~~ program ~~which shall~~ consisting of not less than twenty (20) hours of classroom instruction as set forth in ~~1200-20-12-.02(2)~~ these rules.

(3) To successfully complete a medication administration training program, an ~~unlicensed~~ employee ~~must~~ shall achieve a score of at least 80% percent (%) for the course based on a written, objective test on the components set forth in these regulations. Demonstrated proficiency in the practicum of medication administration ~~is~~ shall also required ~~and shall be determined by the program coordinator~~

administering the course with a score of at least 80 percent (%).

(4) Certification must be renewed every three (3) years by:

(a) Successfully completing the Medication Administration for Unlicensed Personnel program, or

(b) Test-out; by completion of online review followed by successfully passing the written and practical tests administered by the Departmenta certified RN Trainer.

(5)(4) An employee will be eligible to take the competency test two times who does not achieve a score of at least 80 on the written or practical test is eligible for a total of three (3) consecutive attempts. At any point successful completion is achieved, three (3) consecutive attempts resume. Eligibility for the third attempt shall be at least six (6) months from the second. If such individual fails to meet minimum competency requirements in such second during the third test, the employee cannot take the test course again, nor shall the employee be allowed to administer medications.DIDD shall allow employees who failed under the previous system to start fresh under the new system. DIDD shall remove any limit on the number of times an employee may take the exam with no waiting period between attempts. After the second failure of the employee to pass the examination, the cost of further testing shall be shifted to the provider.

Authority: T.C.A. §§4-5-202, 33-1-302, 33-1-303, 33-1-305, 33-1-309 and 68-1-904. **Administrative History:** Original rule filed August 21, 1998; effective November 4, 1998.
November 4, 1998.

0465-01-03-.051200-20-12 .04 **APPROVALS** CERTIFICATION OF UNLICENSED PERSONNELCertification of Unlicensed Personnel

(1) When a new unlicensed employee with prior medication administration training requests to administer medications in a program licensed by or under contract with the Division of Mental Retardation Services, t The provider agency shall obtain confirmation proof of certification (participant record) for new employees from the Department of an employee's approval status, including the date the employee was approved, before the new employee can they are allowed to administer medications.

(2) The Department shall verify an employee's current status and date of last successful completion of the medication administration training program.

(3) When requested, a provider agency shall notify the Department in writing whenever an approved unlicensed employee has his or her approval to administer medication withdrawn by a provider agency.

(4) An unlicensed employee shall not be approved if such employee:

(a) is less than eighteen years of age;

(b) has been convicted of a crime rationally related to his or her employment;

(c) has not successfully completed an approved medication administration course;

(d) received a grade below 80% for an approved medication administration course;

(e) has not been approved by the provider agency to administer medications;

(f) has failed to be re-tested every two years on medication administration in accordance with these rules;

(g) has failed to retake the medication administration test when such individual has been previously approved to administer medications but has not worked with people with mental retardation/developmental disabilities for a period of six months; or

(h) commits medication administration errors which demonstrate lack of competence.

Authority: T.C.A. §§4-5-202, 33-1-302, 33-1-303, 33-1-305, 33-1-309 and 68-4-904. **Administrative History:** Original rule filed August 21, 1998; effective November 4, 1998. ~~*November 4, 1998.*~~

0465-01-03-.06~~1200-20-12-.05 LIMITATIONS ON FUNCTIONS OF UNLICENSED PERSONNEL~~Limitations of Functions of Unlicensed Personnel

(1) The following ~~procedures~~ may ~~not~~ be performed by ~~unlicensed~~ certified personnel under the scope of these regulations and in accordance with the training curriculum:

(a) ~~endotracheal suctioning~~ Medication administration via the following routes~~;~~ : oral, rectal, vaginal eye, ear, nasal and topical; and~~.~~

(b) ~~urinary catheter insertion~~ Administration of medications by subcutaneous route for routine insulin (with additional training) and injectable epinephrine (i.e. EpiPen).

~~(c) nasogastric tube care;~~

~~(d) intravenous therapy;~~

~~(e) adjustment of doses of medications;~~

~~(f) tracheotomy care;~~

~~(g) administration of oxygen;~~

~~(h) administration of fluxuating or mixing insulin dosages; and~~

~~(i) administration of medications by subcutaneous, intramuscular, intradermal or intravenous route, except for routine insulin and one time life saving injections, such as Epipens.~~

(2) This regulation does not preclude the performance of procedures by ~~unlicensed~~ certified personnel pursuant to individual delegation by licensed personnel in accordance with the Nurse Practice Act and the Rules of the Board of Nursing.

(3) Administration of medications included in this exemption cannot be delegated.

Authority: T CA. §§4-5-202, 33-1-302, 33-1-303, 33-1-305, 33-1-309 and 68-1-904. **Administrative History:** Original rule filed August 21, 1998; effective November 4, 1998. ~~*November 4, 1998.*~~

0465-01-03.07~~1200-20-12-.06 PROVIDER AGENCY REQUIREMENTS~~Provider Agency Requirements

(1) A provider agency ~~or program~~ employing ~~unlicensed~~ certified personnel ~~must~~ shall have a written policy ~~and procedure~~ demonstrating compliance with these rules ~~for any employees who administers medications.~~ ~~These~~ This policiesy ~~and procedures~~ ~~must~~ shall be ~~approved~~ accepted by the Department ~~prior to the implementation of medication administration by unlicensed employees in that provider agency or program~~ and ~~must~~ shall include, at a minimum, the following elements:

(a) Medication Prohibitions;

(b) Security;

(c) Program ~~r~~Requirements;

(d) Medication ~~s~~Storage and ~~l~~Labeling;

(e) Editing of ~~Medication~~ medication ~~Records~~records;

(f) Medication ~~R~~refusal;

(g) Medication Administration Record (MAR);

(h) Controlled ~~S~~substances;

(i) Medication ~~V~~variances;

(j) Medication ~~D~~disposal;

(k) Family ~~V~~visit; and

(l) Self-Administration.

(2) A provider agency ~~must~~ shall have a separate Medication Administration Record (MAR) of ordered medications for each person. ~~receiving medication.~~ The ~~record documenting administration~~ MAR must include at least the following:

(a) Name of person receiving the medication;

(b) Name of medication, indication, dosage and route of administration;

(c) Time and date of administration;

(d) Name of prescribing~~, ordering, or approving~~ practitioner;

(e) ~~S~~tarts date and stop dates, if applicable; and

(f) ~~expected therapeutic effects for the person taking the medication~~ Any specific directions;.

~~(g) possible side effects to the person taking the medication;~~

~~(h) storage of medications; and~~

~~(i) disposal of medications~~

(3) ~~As a condition to authorizing or renewing the authorization to operate any provider agency or program that administers medications to persons with mental retardation/developmental disabilities, the Division shall require that the agency have employees qualified pursuant to these rules on duty at any time that the agency administers such medications. The agency must maintain a written record of each medication administered to each person. Such record will be subject to review by the Division as a part of its procedure in authorizing the continued operation of the provider agency and the provider agency's programs.~~ A provider agency ~~must~~ shall maintain a side effects sheet and practitioner orders with the MAR for each medication ordered. Such records will be subject to review by the Department.

(4) Storage, security and disposal of medications ~~are~~ shall be maintained in accordance with State and Federal laws and DIDD regulations.

(5) The agency must have certified ~~staff~~ personnel available to administer medications as ordered and at a place convenient for the person.

Authority: T.C.A. §§4-5-202, 33-1-302, 33-1-303, 33-1-305, 33-1-309 and 68-1-904. **Administrative History:** Original rule filed August 21, 1998; effective November 4, 1998.

0465-01-03-.08~~1200-20-12-.07 SUSPENSION TERMINIATION OF AUTHORITY TO ADMINISTER MEDICATION~~**Termination of Authority to Administer Medication**

(1) The provider agency may submit a recommendation to the Department for termination of authority to administer medications in the event a certified ~~employee~~ personnel is determined to be unable to safely administer medications due to:

(a) The use of drugs, alcohol or controlled substances which could impair judgment; or

(b) Performance of unsafe or unacceptable care of people receiving ~~services in the administration of~~ medications; or

(c) Failure to conform to the essential ~~standards~~ and prevailing standards of medication administration.

The Department shall review the recommendation and provide a decision to the provider agency. Termination of certification notice will be provided to the ~~employee~~ certified personnel by certified mail and he/she shall have the right to request an appeal hearing on his/her termination of authority to administer medications, pursuant to the Tennessee Uniform Administrative Procedures Act.~~.~~

~~(2) Any such denial or suspension of the unlicensed employee's authority shall be reported to the Department in writing. The certified employee may have the authority to administer medication terminated without cause for any reason determined by the Department.~~

Authority: T.C.A. §§4-5-202, 4-5-301, 33-1-302, 33-1-303, 33-1-305, 33-1-309 and 68-1-904. **Administrative History:** Original rule filed August 21, 1998; effective November 4, 1998.
~~*November 4, 1998.*~~

0465-01-03-.09~~1200-20-12-.08 MONITORING OF UNLICENSED PERSONNEL~~**Monitoring of Unlicensed Personnel**

(1) The Department ~~will~~ shall monitor the administration of medications by unlicensed ~~employees~~ personnel. ~~through quality enhancement surveys and follow up m~~Monitoring ~~will~~ shall be completed by ~~R~~registered ~~N~~nurses employed by ~~or contracted with~~ the Department.

(2) ~~Regarding medication administration, monitoring shall include, but not be limited to, review of each provider agency's evaluation and performance records for unlicensed employees who perform the functions and activities provided for in these rules. Such records shall encompass statements and observations by supervisors of unlicensed personnel made during the course of the work performed by the unlicensed employees. Monitoring may include direct observation of medication administration by unlicensed employees approved pursuant to these rules.~~ The provider agency ~~will~~ shall monitor, at a minimum, the first medication pass of the unlicensed personnel upon successful completion of ~~their~~ his/her original certification, provide ongoing monitoring in accordance with agency policy and maintain documentation of such.

Authority: T.C.A. §§4-5-202, 33-1-302, 33-1-303, 33-1-305, 33-1-309 and 68-1-904. **Administrative History:** Original rule filed August 21, 1998; effective November 4, 1998.
~~*November 4, 1998.*~~

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the DIDD (board/commission/ other authority) on 8/4/2015, and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 11/20/14

Rulemaking Hearing(s) Conducted on: (add more dates). 1/12/15

Date: 8-4-15

Signature: Debra K Payne

Name of Officer: Debra K Payne

Title of Officer: Commissioner

SIMONE CUARINO
STATE OF TENNESSEE NOTARY PUBLIC
MONTGOMERY COUNTY

Subscribed and sworn to before me on: 8/4/2015

Notary Public Signature: Simone Cuarino

My commission expires on: 7/11/2017

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

Herbert H. Slatery III

Herbert H. Slatery III
Attorney General and Reporter

8/20/2015
Date

Department of State Use Only

RECEIVED
2015 AUG 28 AM 9:17
SECRETARY OF STATE
PUBLICATIONS

Filed with the Department of State on: 08/28/15

Effective on: 11/26/15

Tre Hargett

Tre Hargett
Secretary of State

Department of State
Division of Publications
312 Rosa L. Parks Avenue, 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: 08-17-15
Rule ID(s): NA
File Date: 8/20/15
Effective Date: 8/20/15

Filing Form for Stay of Effective Date on Rules, Withdrawal of Stay, and Withdrawal of Rules

Agency/Board/Commission:	University of Tennessee
Division:	
Contact Person:	Sean McMinn
Address:	G-16 War Memorial Building Nashville, TN
Zip:	37243
Phone:	(615) 741-3056
Email:	sean.mcminn@capitol.tn.gov

Type of Action on Rule:

X **Stay of Effective Date of Rules**

Rule Filing Date: *05/27/15*
Rule Original Effective Date: *08/25/15*
Length of Stay (not to exceed 75 days): 60 days
New Effective Date of Rule Filing:: *10/24/15*

____ **Notice of Withdrawal of Stay**

Stay Filing Date: *(mm/dd/yy)*
Stay Effective Date: *(mm/dd/yy)*
New Effective Date of Rule Filing: *(mm/dd/yy)*

____ **Notice of Withdrawal of Rules**

Rule Filing Date: *(mm/dd/yy)*
Rule Effective Date: *(mm/dd/yy)*

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 enter only **ONE** Rule Number/RuleTitle per row)

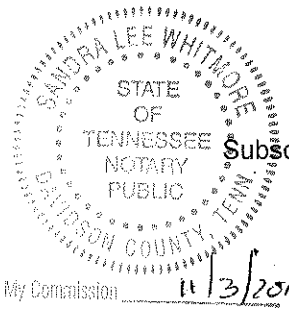
Chapter Number	**Chapter Title**
1720-01-02	Use of University Property
Rule Number	**Rule Title**
1720-01-02-.05	No-Trespass Notices

Date: August 20, 2015

Signature: Sean McMinn

Name of Officer: Sean McMinn

Title of Officer: Legislative Attorney



Subscribed and sworn to before me on: August 20, 2015

Notary Public Signature: Sandra Lee Whitmore

My commission expires on: 11/3/2015

Department of State Use Only

Filed with the Department of State on: 8/20/15

Tre Hargett
Secretary of State

RECEIVED
2015 AUG 20 AM 9:53
SECRETARY OF STATE
PUBLICATIONS