

## G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Environment and Conservation

DIVISION: Remediation

SUBJECT: List of Inactive Hazardous Substance Sites

STATUTORY AUTHORITY: Inactive Hazardous Substance Sites are promulgated under the authority of Tennessee Code Annotated Sections 68-212-206(e) and 68-212-215(e).

EFFECTIVE DATES: August 18, 2016, through June 30, 2017

FISCAL IMPACT: Adding this site to the List of Inactive Hazardous Substance Sites will allow expenditures from the Hazardous Waste Remedial Action fund for investigation, evaluation, and clean-up of the site. All state funds spent for activities at the site will be reimbursed by the Environmental Protection Agency (EPA) either fully or up to ninety percent (90%), depending on the activity. Under the authority of Tennessee Code Annotated Section 68-212-207, the Commissioner may recover costs from liable parties; however, in this instance, no financially-able liable party is available.

STAFF RULE ABSTRACT: This rulemaking hearing rule adds the Walker Machine Products site located at 459 Washington Street in Collierville, Shelby County, Tennessee, to the list of inactive hazardous substance sites. This site was used to produce automated machine screw products, beginning in 1953, until it ceased operations in 2002. Walker Machine Products used chlorinated solvents for cleaning and degreasing their finished products. Soil, surface water, groundwater, and air pathway investigations have determined that the site has been contaminated with chlorinated solvents. The groundwater contaminant plume is impacting Collierville's Water Plant #1, located about one-half (1/2) mile away. The property is currently being used by the Langley Wire Cloth Company, which is not the source of the contamination at the site.

In April 2014, the EPA added this site to the National Priority List. In order to complete the necessary remedial actions on the site, and to meet our statutory obligation to update the state's inactive hazardous substance site list, the rulemaking updates Rule 0400-15-01-.13 List of Inactive Hazardous Substance Sites by adding the Walker Machine Products site to the list of inactive hazardous substance sites.

## **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 comments received during the public comment period.

### **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.

There are no small businesses impacted by this rulemaking.

- (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 small businesses impacted by this rulemaking, therefore there are no reporting, recordkeeping, and other administrative costs.

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

There will be no impact on small businesses.

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

No alternatives are available to achieve the purpose of this rulemaking.

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

The federal counterpart, which placed the site on the federal National Priorities List (NPL) is 40 CFR Part 300 – National Oil and Hazardous Substances Pollution Contingency Plan, Table 1-General Superfund Section. The Department concurred in EPA's addition of this site to the NPL.

TDEC's proposed rule amendment will place the site in a similar status by placing it on the State's list of inactive hazardous substance sites.

- (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.

There is no effect since this rulemaking does not impact small businesses.

### **Impact on Local Governments**

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

The Department does not anticipate an impact on local governments from this rulemaking.

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**For Department of State Use Only**

Sequence Number: 05-08-16  
 Rule ID(s): 6188  
 File Date: 5/20/16  
 Effective Date: 8/18/16

# Rulemaking Hearing Rule(s) Filing Form

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

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

<b>Agency/Board/Commission:</b>	Environment and Conservation
<b>Division:</b>	Remediation
<b>Contact Person:</b>	Tim Stewart
<b>Address:</b>	William R. Snodgrass Tennessee Tower 312 Rosa L. Parks Avenue, 14th Floor Nashville, Tennessee
<b>Zip:</b>	37243
<b>Phone:</b>	(615) 741-4998
<b>Email:</b>	<a href="mailto:Tim.Stewart@tn.gov">Tim.Stewart@tn.gov</a>

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

- Amendment
- New
- Repeal

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

Chapter Number	Chapter Title
0400-15-01	Hazardous Substance Remedial Action
Rule Number	Rule Title
0400-15-01-.13	List of Inactive Hazardous Substance Sites

(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>)

Amendment

0400-15-01

Hazardous Substance Remedial Action

Rule 0400-15-01-.13 List of Inactive Hazardous Substance Sites is amended by adding the following site to the list, such addition being made in a manner so that the entire list remains in numerical order.

0400-15-01-.13 List of Inactive Hazardous Substance Sites.

Promulgated List

SITE NUMBER

SITE NAME

ANDERSON (01)

01504

D.O.E Oak Ridge  
Oak Ridge, TN

01579

Dupont Smith/Atomic City  
Oak Ridge, TN

01580

Anderson County Landfill  
Clinton, TN

SITE NUMBER

SITE NAME

BLOUNT (05)

05501

Aluminum Co. of America  
Alcoa, TN

05503

Aluminum Co. of America  
Alcoa, TN

SITE NUMBER

SITE NAME

BRADLEY (06)

06505

Duracell Inc.  
Cleveland, TN

SITE NUMBER

SITE NAME

CARTER (10)

10502

American Bemberg Plant  
Elizabethtown, TN

10508

Old Bemberg Bldg.  
Elizabethtown, TN

SITE NUMBER

SITE NAME

COCKE (15)

15504

Arapahoe/Rock Hill Labs  
Newport, TN

15505

Newport Dump

15508	Newport, TN Wall Tube and Metal Newport, TN
SITE NUMBER	SITE NAME
	DAVIDSON (19)
19511	Stauffer Chemical Nashville, TN
19524	Municipal Landfill Nashville, TN
SITE NUMBER	SITE NAME
	FAYETTE (24)
24501	Ross Metals Rossville, TN
SITE NUMBER	SITE NAME
	FRANKLIN (26)
26501	AEDC Arnold Air Force Station, TN
SITE NUMBER	SITE NAME
	GIBSON (27)
27512	ITT Telecommunications Milan, TN
SITE NUMBER	SITE NAME
	HAMBLEN (32)
32506	BASF/Stauffer Chemical Co. Morristown, TN
32514	Old Morristown-Hamblen Co. Landfill Morristown, TN
32517	Neblett Road Dump Morristown, TN
32518	Pine Brook Road Dumb Morristown, TN
SITE NUMBER	SITE NAME
	HAMILTON (33)
33527	Velsicol/Residue Hill Chattanooga, TN
33540	Montague Park Chattanooga, TN
33543	Hamill Road Dump #3 Chattanooga, TN
33547	Chattanooga Coke Chattanooga, TN

33550	North Hawthorne Dump Chattanooga, TN
33557	USVAAP Chattanooga, TN
33584	Chattanooga Creek Chattanooga, TN
33596	Mor-Flo Industries, Inc. Chattanooga, TN
33618	Morningside Chemicals Chattanooga, TN
33620	National Microdynamics (Lutex Chemical) Chattanooga, TN
33635	Tennessee Transformer Chattanooga, TN
33660	Electro-Lite Battery Chattanooga, TN

SITE NUMBER

SITE NAME

HARDEMAN (35)

35506

Velsicol Chemical  
Toone, TN

SITE NUMBER

SITE NAME

HENRY (40)

40506

Henry County Boneyard  
Paris, TN

SITE NUMBER

SITE NAME

HICKMAN (41)

41504

Wrigley Charcoal  
Wrigley, TN

SITE NUMBER

SITE NAME

JEFFERSON (45)

45503

Hodgson, Hollis  
Jefferson City, TN

SITE NUMBER

SITE NAME

KNOX (47)

47514

Witherspoon Landfill  
Knoxville, TN

47518

Badgett Road Landfill  
Knoxville, TN

47521

Southern Rail/Coster Shop  
Knoxville, TN

47523

Foote Mineral/Cas Walker (Dante)  
Knoxville, TN

47530

Screen Art, Inc.  
Knoxville, TN

47541

Witherspoon Recycling

47545	Knoxville, TN Sanitary Laundry & Dry Cleaning
47547	Knoxville, TN Roscoe Fields Property
47559	Knoxville, TN Smokey Mountain Smelters
47573	Knoxville, TN Dixie Barrel & Drum Co.

SITE NUMBER

SITE NAME

LAWRENCE (50)

50502	Murray-Ohio Landfill Lawrenceburg, TN
50505	Lawrenceburg Horseshoe Bend Lawrenceburg, TN
50509	Former Murray Ohio Plant Lawrenceburg, TN

SITE NUMBER

SITE NAME

LOUDON (53)

53502	Greenback Industries Greenback, TN
53503	Lenoir City Car Works Lenoir City, TN

SITE NUMBER

SITE NAME

MADISON (57)

57508	American Creosote Works Jackson, TN
57510	Porter Cable Jackson, TN
57517	Boone Dry Cleaners Jackson, TN

SITE NUMBER

SITE NAME

MARION (58)

58502	North American Environmental Whitwell, TN
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SITE NUMBER

SITE NAME

MARSHALL (59)

59502	Heil Quaker Corp. Lewisburg, TN
59503	Lewisburg Dump Lewisburg, TN

SITE NUMBER	SITE NAME
	MAURY (60)
60501	Stauffer Chemical Co. Mt. Pleasant, TN
60534	Monsanto Columbia, TN

SITE NUMBER	SITE NAME
	MONROE (62)
62505	Red Ridge Landfill Madisonville, TN

SITE NUMBER	SITE NAME
	POLK (70)
70502	Apache Blast Copperhill, TN

SITE NUMBER	SITE NAME
	PUTNAM (71)
71502	Putnam County Landfill Cookeville, TN

SITE NUMBER	SITE NAME
	ROANE (73)
73504	Roane Alloys Rockwood, TN
73506	Rockwood Iron & Metal Rockwood, TN
73512	Joyner Scrap Yard Rockwood, TN

SITE NUMBER	SITE NAME
	RUTHERFORD (75)
75522	Old Murfreesboro City Dump Murfreesboro, TN

SITE NUMBER	SITE NAME
	SHELBY (79)
79503	Arlington Blending Arlington, TN
79517	Bellevue Avenue Landfill Memphis, TN
79518	Cypress Creek Memphis, TN

79525	International Harvester Memphis, TN
79536	W. R. Grace & Co. Memphis, TN
79549	Chickasaw Ordinance Works Memphis, TN
79552	Carrier Corporation Collierville, TN
79561	Nilok Chemical Company Memphis, TN
79569	Chapman Chemical Co. Memphis, TN
79582	Diesel Recon Co. Memphis, TN
79598	North Hollywood Dump Memphis, TN
79604	Memphis Public Works/Jackson Pits Memphis, TN
79676	Smalley-Piper Collierville, TN
79742	Pulvair Corporation Millington, TN
79758	Old Osmose Chemical Memphis, TN
79781	John Little/Drum Memphis, TN
79798	61 Industrial Park Site Memphis, TN
79799	Tennessee Air National Guard Memphis, TN
79800	Creotox Chemical Company Memphis, TN
79805	Fiberfine of Memphis Memphis, TN
79843	Warfield Place/Pulvair Memphis, TN
<u>79845</u>	<u>Walker Machine Products</u> <u>Collierville, TN</u>

SITE NUMBER

SITE NAME

SULLIVAN (82)

82514	Sperry/Unisys Bristol, TN
82516	Earhart Bristol, TN

SITE NUMBER

SITE NAME

UNICOI (86)

86501	Bumpass Cove Landfill Embreeville, TN
86502	Bumpass Cove – Fowler Erwin, TN
86505	Morrell Electric, Inc. Erwin, TN

SITE NUMBER

SITE NAME

WARREN (89)

89504

Century Electric Facility  
McMinnville, TN

SITE NUMBER

SITE NAME

WASHINGTON (90)

90510

Cash Hollow Dump  
Johnson City, TN

SITE NUMBER

SITE NAME

WAYNE (91)

91501

Mallory Capacitor Co.  
Waynesboro, TN

91502

Waynesboro City Dump  
Waynesboro, TN

SITE NUMBER

SITE NAME

WILSON (95)

95501

TRW/Ross Gear Division  
Lebanon, TN

Authority: T.C.A. §§ 68-212-201 et seq. and 4-5-201 et seq.

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)
<b>Marty Calloway</b> (Petroleum Business with at least 15 Underground Storage Tanks)	X				
<b>Stacey Cothran</b> (Solid/Hazardous Waste Management Industry)	X				
<b>Kenneth L. Donaldson</b> (Municipal Government)	X				
<b>Dr. George Hyfantis, Jr.</b> (Institution of Higher Learning)	X				
<b>Bhag Kanwar</b> (Single Facility with less than 5 Underground Storage Tanks)	X				
<b>Alan M. Leiserson</b> Environmental Interests	X				
<b>Jared L. Lynn</b> (Manufacturing experienced with Solid/Hazardous Waste)	X				
<b>David Martin</b> (Working in a field related to Agriculture)	X				
<b>Beverly Philpot</b> (Manufacturing experienced with Underground Storage Tanks/Hazardous Materials)	X				
<b>DeAnne Redman</b> (Petroleum Management Business)	X				
<b>Mayor A. Franklin Smith, III</b> (County Government)				X	
<b>Mark Williams</b> (Small Generator of Solid/Hazardous Materials representing Automotive Interests)	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Underground Storage Tanks and Solid Waste Disposal Control Board on 02/03/2016, 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: 09/09/15

Rulemaking Hearing(s) Conducted on: (add more dates). 11/18/15

Date: February 3, 2016

Signature: *Stacey Cothran*

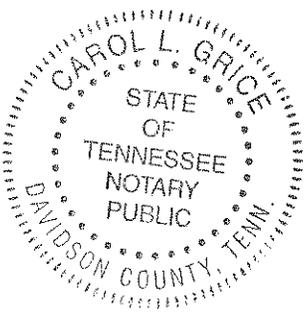
Name of Officer: Stacey Cothran

Title of Officer: Chair

Subscribed and sworn to before me on: February 3, 2016

Notary Public Signature: *Carol L. Grice*

My commission expires on: June 21, 2016



Rules of the Board of Underground Storage Tanks and Solid Waste Disposal Control Board  
Chapter 0400-15-01 Hazardous Substance Remedial Action  
Rule 0400-15-01-.13 List of Inactive Hazardous Substance Sites

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

Herbert H. Slatery III  
Herbert H. Slatery III  
Attorney General and Reporter  
5/18/2016  
Date

**Department of State Use Only**

Filed with the Department of State on: 5/20/16

Effective on: 8/18/16

Tre Hargett  
Tre Hargett  
Secretary of State

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

DEPARTMENT: Comptroller of the Treasury

DIVISION: Utility Management Review Board

SUBJECT: Basic Procedural Guidelines for the Utility Management Review Board's Administrative Processes

STATUTORY AUTHORITY: Tennessee Code Annotated, Sections 7-82-702, and 7-8-702 — 7-82-709

EFFECTIVE DATES: August 18, 2016, through June 30, 2017

FISCAL IMPACT: Minimal

STAFF RULE ABSTRACT: This proposed rule provides basic procedural guidelines for the Utility Management Review Board's (UMRB) administrative processes. The rule changes previous UMRB regulations by removing all provisions that duplicated state law, streamlining the regulatory procedures section, and clarifying the provisions related to board member conflicts of interest.

**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)(2) and T.C.A. § 4-5-203(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

Not applicable—the regulation of small business enterprises is not within the scope of the UMRB's statutory authority.

### **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 estimated fiscal impact on state and local government revenues and expenditures is minimal; the rule is merely a simplified version of the UMRB's prior rule.

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Sequence Number: 05-14-16  
Rule ID(s): 6189  
File Date: 5/20/16  
Effective Date: 8/18/16

# Proposed Rule(s) Filing Form

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

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

<b>Agency/Board/Commission:</b>	Comptroller of the Treasury
<b>Division:</b>	Utility Management Review Board
<b>Contact Person:</b>	John Greer/Betsy Knotts
<b>Address:</b>	Suite 1700, James K. Polk Building, 505 Deaderick Street
<b>Zip:</b>	37243
<b>Phone:</b>	(615) 401-7879; (615) 401-7954
<b>Email:</b>	John.Greer@cot.tn.gov Betsy.Knotts@cot.tn.gov

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

- Amendment
- New
- Repeal

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

Chapter Number	Chapter Title
1715-01	Utility Management Review Board
Rule Number	Rule Title
1715-01-01	Purpose, Scope, and Applicability
1715-01-02	Definitions
1715-01-03	Utility Management Review Board: Composition, Conflict of Interest
1715-01-04	Powers, Duties and Authority
1715-01-05	Procedures for Addressing Financially Distressed Utility Districts, Consolidation, Complaints and Water Loss
1715-01-06	Appeals

Chapter Number	Chapter Title
Rule Number	Rule Title

**RULES  
OF  
COMPTROLLER OF THE TREASURY**

**CHAPTER 1715-01  
UTILITY MANAGEMENT REVIEW BOARD**

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1715-01-.0201	Definitions		
1715-01-.03	Utility Management Review Board: Composition, Conflict of Interest	1715-01-.0603	Appeals Regulatory Procedures
1715-01-.0402	Powers, Duties and Authority		

**~~1715-01-.01 PURPOSE, SCOPE, AND APPLICABILITY.~~**

~~The purpose of the Utility Management Review Board (established in T.C.A., Title 7, Chapter 82) is to advise utility district boards of commissioners in the area of utility management. This Board, provided for within the Comptroller of the Treasury, determines and ensures the financial integrity of certain facilities by effecting adequate user rates or system efficiencies, including negotiated consolidations of certain facilities. In carrying out the provisions of this part, the Board shall be deemed to be acting for the public welfare and in furtherance of the legislature's intent that utility districts be operated as self-sufficient enterprises.~~

**1715-01-.0201 DEFINITIONS.**

- (1) As used in these regulations:
  - (a) ~~“Act” means the Utility Districts Law of 1937, as amended.~~
  - (b) (a) ~~“Board” means the Utility Management Review Board.~~
  - (c) (b) ~~“Chair” means the Comptroller’s designee.~~
  - (d) (c) ~~“Comptroller” means the Comptroller of the Treasury, or his designee.~~
  - (e) (d) ~~“Counsel” means an attorney from the Comptroller’s Office.~~
  - (f) (e) ~~“Staff” means any person or persons under the control and direction of the Comptroller.~~
  - (g) ~~“Financially distressed utility district” means a utility district that is identified by the Comptroller of the Treasury pursuant to T.C.A. 57-82-401.~~
  - (h) ~~“Utility District” has the meaning set forth in T.C.A. 57-82-701(a).~~

~~1745-01-03 UTILITY MANAGEMENT REVIEW BOARD: COMPOSITION, CONFLICT OF INTEREST.~~

~~(1) Term of Appointments and Vacancies~~

- ~~(a) Board members shall serve for a four (4) year term, expiring on October 31st except as designated herein, but continuing to serve until a successor has been appointed or until the Board member has been reappointed.~~
- ~~(b) Appointments to succeed a Board member who is unable to serve a full term shall be for the remainder of that term. Appointments to the Board for the remainder of unexpired terms and subsequent appointments shall be representative as stipulated in T.C.A. §7-82-701(b).~~
- ~~(c) Board members may be reappointed, but they do not automatically succeed themselves.~~

~~(2) Quorum, Conflict of Interest, Expenses~~

- ~~(a) Five (5) Board members shall constitute a quorum and a majority of those present and voting shall be required for a determination by the Board.~~
- ~~(b) No Board member may participate in making a decision in any case involving a utility district in which the Board member has a financial interest, a conflict of interest as proscribed by State law or a contract of employment.~~
- ~~(c) Members of the Board shall be entitled to actual and necessary expenses incurred while engaged in the performance of official duties as authorized by the Board; however, all expenses and reimbursement shall be in accordance with the provisions of the Comprehensive Travel Regulations promulgated by the Commissioner of Finance and Administration and approved by the Attorney General and Reporter.~~

~~(3) Records and Reports~~

- ~~(a) The Board or its duly appointed staff shall keep complete and accurate records of proceedings.~~
- ~~(b) Records will be located in the office of the Comptroller and open to public inspection as required by law and in accordance with Comptroller policy, including fees and charges. The Board, in consultation with the Comptroller, shall designate staff as the official contact for public records requests.~~
- ~~(c) The Comptroller shall assist the Board and be responsible for minutes and other duties as required.~~
- ~~(d) The Board or its designee shall report annually to the Governor and the General Assembly on the activities of the preceding year. This report will be filed with the Comptroller's office no later than January 31st of each year.~~

**1715-01-.0402 POWERS, DUTIES AND AUTHORITY.**

- (1) ~~Generally Accepted Accounting Principles and the interpretations of the Comptroller shall be used by the Board.~~
- (2) ~~Conference Meeting: One or more members may participate in a meeting of the Board, or a Committee of the Board, in lieu of physical presence utilizing technology by means of which all persons participating in the meeting can hear each other (participation in this manner shall constitute presence in person at such meeting). A physical meeting location where the public can access the meeting shall be designated if the technology utilized does not readily permit public access. Pursuant to T.C.A. § 8-44-108 if a quorum is not able to be present physically at the location of a meeting, then the meeting may occur only if the Board or the Committee makes a determination that a necessity exists. "Necessity" means (1) that the matters to be considered at that meeting require timely action, (2) that physical presence by a quorum of the members is not practical within the period of time requiring action, and (3) that participation by a quorum of the members by use of technology is necessary. Such determination, and a recitation of the facts and circumstances on which it was based, shall be included in the minutes of the meeting. If a physical quorum is not present at the location of a meeting, then the Secretary shall file such determination of necessity, including the recitation of the facts and circumstances on which it was based, with the office of the Tennessee Secretary of State no later than two (2) working days after the meeting.~~
- (3) ~~The Board shall receive and consider from any source suggestions for amendments to T.C.A., Title 7, Chapter 82. These suggestions are to be submitted in writing. Within one hundred twenty (120) days from the time request is received, the Board shall:
  - (a) ~~Consider the merits of the suggestions; and~~
  - (b) ~~Recommend amendments to the Comptroller; or~~
  - (c) ~~Report to the suggesting party, in writing, the reasons for not recommending such proposed amendments.~~~~

**1715-01-.05 PROCEDURES FOR ADDRESSING FINANCIALLY DISTRESSED UTILITY DISTRICTS, CONSOLIDATION, COMPLAINTS AND WATER LOSS.**

- (1) ~~Financially Distressed Utility Districts
  - (a) ~~Within sixty (60) days from the receipt of the Comptroller's referral pursuant to the Act, the Board shall schedule a hearing to determine whether the utility district described in the report is likely to continue in a financially distressed position. This initial hearing shall not be a contested case within the meaning of T.C.A. §§ 4-5-101 et seq., but rather one that is legislative in nature.~~~~

(Rule 1715-01-.05, continued)

(b) Upon a determination by the Board that the utility district is likely to remain in a financially distressed position, the Board may order the management of the utility district to adopt and maintain user rate structures necessary to:

1. Fund current operation, maintenance, principal, and interest obligations within 12 months, unless otherwise specified by the Board;
2. Resolve any default on indebtedness within 12 months, unless otherwise specified by the Board;
3. Fund depreciation in 1-3 years, unless otherwise specified by the Board; and/or
4. Liquidate in an orderly fashion any deficit total net assets within 5-10 years unless otherwise specified by the Board.

(c) In the determination of an equitable user rate, the review by the Board may include, but not be limited to, the following factors:

1. The date and amount of the last rate increase;
2. Average user rates for commercial and residential users;
3. Average median household income;
4. Typical cost of similar treatment process;
5. User Charge System;
6. Ratio of minimum bills to total bills;
7. Number of users and user density per mile of utility line; and
8. Ratio of water processed to water billed.

(d) Any such order shall become final and not subject to review unless the parties named therein request by written petition a hearing before the Board, no later than thirty (30) days after the date such order is served. Any hearing or rehearing shall be brought pursuant to the Uniform Administrative Procedures Act, compiled in T.C.A., Title 4, Chapter 5, Part 3. Such hearing may be conducted by the Board at a regular or special meeting by any member or panel of members as designated by the Board to act on its behalf or the Board may designate an administrative judge who shall have the power and authority to conduct hearings in the name of the Board to issue initial orders pursuant to the Uniform Administrative Procedures Act, compiled in T.C.A., Title 4, Chapter 5.

(2) Consolidation

(a) Prior to the consolidation of any utility district pursuant to the Act, the Board shall hold a public hearing for all interested parties to such consolidation at a place convenient to such parties at least sixty (60) days prior to the effective date of such consolidation. Notice of such public hearing shall be published in a newspaper of general circulation in the affected area not later than ten (10) days prior to the hearing.

(Rule 1715-01-.05, continued)

- (b) ~~If the parties to consolidation fail to reach an agreement within two hundred and seventy (270) days from the commencement of negotiations, or proceedings are otherwise terminated, the Board will take action to affect the legislative intent of financially self-sufficient utility districts.~~

(3) ~~Rate Review Petitions and Complaints~~

- (a) ~~Processing of Rate Review Petitions and Complaints with the Board.~~

- ~~1. Rate Review petitions and complaints will be filed in writing with the staff.~~
- ~~2. Staff will contact the utility district with letters (with delivery confirmation) to the utility board of commissioners and manager (if appropriate) with a copy of the rate review petition or the complaint and a and a request for response to the complaint or the rate review petition including but not limited to copies of appropriate bylaw provision and minutes of the board of commissioners' actions.~~
- ~~3. Staff will report to the Board with the complaint or the rate review petition and utility's response to the complaint or the rate review petition, as set forth below.~~
- ~~4. If either party fails to comply with a request from the Board or staff during the investigation stage within forty five (45) days of receipt by certified mail of such request, the Board may, on its own motion, either dismiss the complaint or petition or hold the offending party in default.~~
- ~~5. An "open hearing" under this rule shall not be a "contested case" under Tennessee Uniform Administrative Procedures Act, T.C.A. §§ 4-5-101 et seq. The hearing shall be in the format of a legislative hearing. The complainant and the utility district will be given the opportunity to appear before the Board and offer testimony, witnesses, exhibits and affidavits. The Board shall have the opportunity to question the persons appearing before it who are offering testimony; however, the parties shall not be entitled to cross-examine witnesses. The Board chairman shall preside over the hearing. The staff, including counsel to the Board, shall assist and advise the Board. Board counsel may, at the Board's request, ask questions of the witnesses.~~
- ~~6. The Board staff and counsel shall assist the Board and do not represent the interests of any petitioner or utility district.~~

(b) ~~Rate Review Petitions~~

- ~~1. The Board shall review the rates of a utility district pursuant to T.C.A. §7-82-102 if the Board receives a petition signed by at least ten percent (10%) of the users within the authorized area of the utility district.~~
- ~~2. The Board will verify the validity of the petitioners by the records on file in the said utility district within sixty (60) days of receipt of the petition.~~
- ~~3. Upon validation of the petitioners, the Board will review the rates addressed in the petition. The Board staff will check for conformance with established regulations and policies within the district.~~

(Rule 1715-01-.05, continued)

4. ~~After the completion of the investigation, the Board staff shall hold a public hearing concerning the petition and its investigation. This public hearing shall be held, after notice, in the county in which the utility district maintains its principal office.~~
5. ~~Upon conclusion of the public hearing and investigation, the Board staff will make public its findings within thirty (30) days of the public hearing.~~
6. ~~The Board will review the rate petition and staff findings. The Board's review may consist of a review of the minutes, transcripts and other evidence of the utility board's actions and additional affidavit evidence submitted by the parties. If it deems appropriate, the Board may hold an open hearing as provided in 1715-01-.05(3)(a). Upon review of all the information, the Board may make a final decision at the next regular Board meeting following the conclusion of the hearing but at a time not to exceed ninety (90) days.~~
7. ~~The Board staff and counsel shall assist the Board and do not represent the interests of any petitioner or utility district.~~

~~(c) Customer Complaints~~

1. ~~Within thirty (30) days of a decision of a board of commissioners a customer or any member of the public may request a review of that decision by the Board by submitting a written request to the Board.~~
2. ~~The Board's review of complaints will be limited to whether the utility district had rules and regulations as required by T.C.A. § 7-82-402(b) and whether the utility district considered and resolved the complaint in accordance with the rules and regulations of the utility district. For purposes of this subsection (c) "complaints" shall include complaints concerning the availability of service(s), the quality of service(s), the adjustment of bills, and all complaints of any nature concerning the services provided and the charge(s) for the service(s), except for rate review petitions under subsection (b). All complaints relating to water quality shall be referred to the Division of Water Supply by Board staff.~~
3. ~~Upon conclusion of the investigation, the Board will review the complaint and staff findings. The Board's review of the minutes, transcripts and other evidence of the utility board's actions and additional affidavit evidence submitted by the parties. If it deems appropriate, the Board may hold an open hearing as provided in 1715-01-.05(3)(a).~~
4. ~~Upon conclusion of the hearing and review process, the Board may issue a final order at the next regular meeting, but at a time not to exceed ninety (90) days. Any judicial review of any decision of the Board will be by common law certiorari within the county of the utility district's principal office.~~
5. ~~The Board staff and counsel shall assist the Board and do not represent the interests of any petitioner or utility district.~~

~~(4) Water Loss~~

- ~~(a) The Board will review the written report required in T.C.A. § 7-82-401(i) no less than annually to determine the acceptable unaccounted for water loss~~

~~(Rule 1715-01-05, continued)~~

~~percentage for utility districts. Any amount greater than the acceptable unaccounted for water loss percentage established by the Board shall be considered excessive.~~

~~(b) Once the percentage is determined, the Board shall notify the Division of Municipal Audit within the Comptroller's office in an appropriate manner of its determination of acceptable unaccounted for water loss percentage. The Division of Municipal Audit will make referrals to the Board based on that percentage.~~

~~(c) The acceptable unaccounted for water loss percentage shall be posted on the website of the Board within thirty (30) days of its decision.~~

**~~1715-01-06 APPEALS.~~**

~~(1) Any order or ruling of the Board shall become final unless the parties named therein request by written petition a hearing before the Board, no later than thirty (30) days after such order or ruling is served pursuant to the Uniform Administrative Procedures Act, T.C.A., Title 4, Chapter 5, Part 3.~~

~~(2) Any appeal hearing may be conducted by the Board at a regular or special meeting by any members, or administrative judge as designated by the Board to act on the Board's behalf.~~

(1) Terms; expenses

(a) Board members shall be appointed to four-year terms.

(b) If a successor is not appointed before the end of a Board member's four-year term, the Board member shall continue to serve until a successor is appointed or until the Board member is reappointed.

(c) Appointments to succeed a Board member who is unable to serve a full-term shall be for the remainder of that term.

(d) Board members shall serve without compensation, but shall be eligible for reimbursement for travel expenses in accordance with the provisions of the comprehensive travel regulations as promulgated by the Department of Finance and Administration and approved by the Attorney General and Reporter.

(2) Meetings

(a) The Board shall exercise its powers only at public meetings.

(b) The Board shall hold at least two meetings each calendar year.

(c) The Board may hold special meetings.

(d) Special meetings shall be called by the Chair or by any two Board members.

- (e) For any calendar year, the Board by resolution may set a regular meeting schedule.

(3) Quorum

- (a) A majority of the Board constitutes a quorum.
- (b) A majority of the Board members present and voting shall be required for formal action of the Board; for purposes of determining whether a Board member is voting, any member who has been determined by Counsel to have a conflict of interest or an appearance of impropriety must be excluded.

(4) Conflicts of interest; appearances of impropriety

- (a) Board members shall file annual written disclosures of financial interests and other direct and indirect conflicts of interest with Staff to be maintained in accordance with applicable records retention policy and open to the public in accordance with Comptroller policy and state law.
- (b) Board members are not authorized to participate in the discussion of or to vote on matters involving entities in which the Board member has a financial interest, with which the Board member has a conflict of interest, with which the Board member has a contract of employment, or if there is any appearance of impropriety as determined by Counsel.
- (c) At each Board meeting, Counsel shall state the following on the record:
  - 1. The Board was created to act for the public welfare and in furtherance of the legislature's intent that utility systems be operated as self-sufficient enterprises.
  - 2. Board members are not authorized to participate in the discussion of or to vote on matters involving entities in which the Board member has a financial interest, with which the Board member has a conflict of interest, with which the Board member has a contract of employment, or if there is any appearance of impropriety.

(5) Records

- (a) Staff shall keep complete and accurate records of Board meetings.
- (b) Board records will be located in the office of the Comptroller and will be open to the public in accordance with Comptroller policy and state law.

(6) Guidelines

- (a) The Board may annually delegate certain duties to Staff related to researching, drafting, and updating Board guidelines and other educational materials.
- (b) The Board may annually review, amend, and endorse by formal action the following:
  - 1. A non-revenue water percentage and validity score that provide parameters for water loss referrals and any related Board guidelines or educational materials.

2. A list of certain factors that are used by the Board when evaluating the reasonableness of rate structures and any related Board guidelines or educational materials.
3. A list of model utility system policies and any related Board guidelines or educational materials.
4. A priority list of commissioner training topics and any related Board guidelines or educational materials.

1715-01-.03 Regulatory Procedures

(1) Formal Review

- (a) When an entity is referred by operation of statute to the Board for any reason, including, but not limited to financial distress, Comptroller investigation, or excessive water loss, the entity will undergo a formal review by Staff and the Board.
- (b) In preparation for the Board's formal review, Staff may request and review documents of the entity and speak with officials and staff of the entity. Staff shall gather as much verifiable information as possible about the circumstances leading to the referral and summarize that information, as well as remedial steps taken by the entity for the Board; Staff must be able to provide backup documentation for all statements made in any case summary.
- (c) The Board shall review Staff's case summary at a public meeting, request any backup documentation, and decide what the entity must do to correct any issues if the Board decides satisfactory remedial actions have not been taken by the entity. Counsel shall document the Board's direction(s) in the form of a Board order, letter, or memorandum. The order or similar document shall require the entity to update the Board in writing by a date certain prior to formal release from Board oversight. The Board's direction(s) must be met before it releases the entity from Board oversight.
- (d) Upon satisfactory compliance with the direction(s) of the Board, the Board shall instruct Staff to close the review and inform the entity of its changed status.

(2) Board Investigation

- (a) In certain circumstances, including, but not limited to, when an entity has been referred by operation of statute to the Board for two or more years consecutively, the Board may request Staff to perform an investigation of an entity's financial, technical, and managerial capacity.
- (b) Staff may request and review documents, speak with officials and staff of the entity, and attend entity meetings.
- (c) At the conclusion of the investigation, Staff shall summarize its findings and recommendations in a draft report to the Board.
- (d) The Board shall review and amend as necessary the draft report at a public meeting and decide what the entity must do to remedy any issues. The Board shall then direct Counsel to enter into an order. The order shall require the entity to update the Board in writing by a date certain as a condition for formal release from Board oversight and the investigation.
- (e) At the appropriate time, the Board shall direct Staff to close the investigation formally and inform the entity of its changed status.

### (3) Informal Hearing

- (a) Counsel shall review every customer request for an informal hearing in order to assess whether the matter falls within the legal jurisdiction of the Board.
- (b) Upon confirmation of jurisdiction, Counsel shall prepare the matter for informal hearing by requesting evidence from both parties, including, but not limited to, minutes, transcripts, policies, rules, cost of service, and other related documentation.
- (c) Both parties shall have an opportunity to be heard at the informal hearing.
- (d) After reviewing the evidence, the Board shall direct Counsel to enter an order memorializing the Board's reasoning and conclusion(s).

### (4) Contested Case

- (a) In the event of customers petitioning the Board to initiate a contested case hearing, Staff shall verify the signatures on the petition and prepare a Staff recommendation to the Board.
- (b) At a public meeting, the Board shall review the Staff recommendation and, if appropriate, the Board shall take formal action to initiate a contested case hearing. The Board shall direct Staff and Counsel accordingly to ensure that the case is handled in an efficient manner.
- (c) All contested cases before the Board shall be conducted pursuant to the Rules of Procedure for Contested Cases as compiled at Chapter 1360-04-01.

### (5) Litigation

- (a) Within the parameters of state law, as confirmed by Counsel, the Board may initiate legal proceedings against noncompliant entities.
- (b) The Board shall exhaust all statutorily authorized administrative procedures before initiating any formal legal proceedings.
- (c) In all matters involving formal litigation, the Board shall engage the Attorney General and Reporter.

\* 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)
Ann Butterworth	X				
Tom Moss	X				
Jim Hunter	X				
Kevin Botts	X				
Tim Pelham				X	
Bruce Giles	X				
Jason West	X				
Rebecca Hunter	X				
Pat Riley	X				

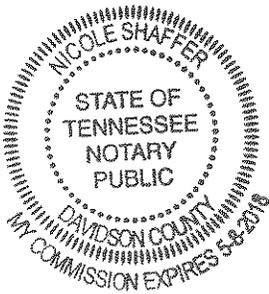
I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the (board/commission/other authority) on 12/03/2015 (date as mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of ninety (90) days of the filing of the proposed rule with the Secretary of State.

Date: 05/05/2016

Signature: Ann V. Butterworth

Name of Officer: Ann V. Butterworth

Title of Officer: Chair of the Utility Management Review Board



Subscribed and sworn to before me on: 05/05/2016

Notary Public Signature: Nicole Shaffer

My commission expires on: 05/08/2018

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

Herbert H. Slattery III

Herbert H. Slattery III  
Attorney General and Reporter

5/18/2016

Date

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Filed with the Department of State on: 5/20/16

Effective on: 8/18/16

Tre Hargett

Tre Hargett  
Secretary of State

## G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Department of Commerce and Insurance

DIVISION: Division of Fire Prevention

SUBJECT: Minimum Building Construction Safety Standards for Fire Prevention and Protection in Tennessee

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

EFFECTIVE DATES: August 4, 2016 through June 30, 2017

FISCAL IMPACT: Minimal

STAFF RULE ABSTRACT: This rulemaking hearing rule includes amendments to Tenn. Comp. R. & Regs. 0780-02-02 that will update the minimum statewide building construction safety standards for fire prevention, fire protection, and building construction safety in Tennessee. The amendments to Tenn. Comp. R. & Regs. 0780-02-02-.01 replace the 2006 edition of the International Building Code (IBC) with the 2012 edition of the IBC. The amendments will adopt the 2012 editions of the fuel gas, plumbing, property maintenance, existing building, energy, mechanical standards, and the International Fire Code (IFC). For state buildings, educational occupancies, and any other occupancy requiring an inspection by the state fire marshal for initial licensure, NFPA 101 Life Safety Code, 2012 edition, published by the National Fire Protection Association (NFPA) is adopted. The amendments provide for exceptions to the newly adopted standards to avoid duplication and conflicts with other applicable statutes and rules.

## 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.

Prior to the public hearing on August 19, 2015, regarding the adoption of amendments to Tenn. Comp. R. & Regs. 0780-02-02 Codes and Standards, one written comment was received from Mr. Dan Johnson with the East Tennessee Chapter of the Tennessee Building Officials Association (TBOA). Mr. Johnson's comment addressed concern of the proposed rules and the application of the standards adopted herein regarding accessibility requirements adopted by the state fire marshal and local jurisdictions. Chris Bainbridge, Director of Codes Enforcement for the Division of Fire Prevention responded on behalf of the agency that the proposed rules will not impact the existing state accessibility standard, which is currently the 2010 ADA standard, and local jurisdictions have the authority to adopt and enforce national standards independently. Mr. Johnson also made a verbal statement at the public hearing, to accompany his previously submitted written comment, in support of adoption of the proposed rules.

At the public rulemaking hearing, multiple oral comments and statements were made by persons in attendance. Mr. Steve Mills with the city of Hendersonville and the TBOA and Mr. Dwayne Hicks with the TBOA made statements in support of adopting the proposed amendments and the 2012 editions of the International Code Council (ICC) published codes and standards. Mr. John Finch representing the Association of General Contractors spoke in support of the proposed amendments. Mr. Mark Roberts with the International Code Council (ICC) issued a statement in support of adoption of the 2012 editions of the published codes for commercial buildings. Mr. Eddie Phillips past president of the Tennessee Fire Chiefs Association spoke in support of adopting the published rules. Mr. John Householder, building official with the town of Farragut, also spoke in support of adopting the published rules and the family of international codes published by ICC.

Mr. Jim Pillow, a West Tennessee Building Inspector, made several comments regarding the proposed amendments. Mr. Pillow spoke in support of the rule regarding prohibition against retroactive enforcement of codes. However, Mr. Pillow was not in support of adoption of the International Conservation Energy Code (IECC) in particular for apartment buildings. Mr. Pillow was also not in support of the state fire marshal adopting the specifically referenced standards for mechanical and plumbing. Mr. Pillow also requested that the agency add a provision in the rules that local jurisdictions (municipalities and counties) will not be required to enforce any code or standard provision that the state fire marshal is not enforcing as well.

Director Bainbridge responded that the agency is required to adopt the 2012 edition of the IECC as a condition for receiving federal funds through the American Recovery and Reinvestment Act (ARRA). Director Bainbridge also pointed out that the agency was sensitive to such issues and that some provisions of the 2012 edition of the IECC in regards to certain facilities and structures were specifically not adopted due to concerns previously expressed to the state fire marshal by various contractors and building designers.

### **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. Types and estimated number of small businesses directly affected:

Small businesses involved in the construction of commercial buildings will be affected by the promulgation of these rules.

2. Projected reporting, recordkeeping, and other administrative costs:

There is no foreseeable alteration in existing reporting or recordkeeping utilized by small businesses that will result from the promulgation of these rules.

3. Probable effect on small businesses:

Small businesses involved in the construction of commercial buildings will be affected by the promulgation of these rules.

4. Less burdensome, intrusive, or costly alternative methods:

The amended rules are not anticipated to impact small businesses more significantly than the current rules provide. There has not been a less burdensome, intrusive or costly alternative method identified or recommended for use.

5. Comparison with federal and state counterparts:

There are no federal counterparts to the rule. A majority of local exempt jurisdictions in the state have adopted the same codes proposed under the rules, which will establish the state minimum standard for the construction of commercial buildings.

6. Effect of possible exemption of small businesses:

There are no possible exemptions for small businesses to the requirements contained in the proposed rules.

### **Impact on Local Governments**

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

These amended rules are projected to impact 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](mailto:publications.information@tn.gov)

**For Department of State Use Only**

Sequence Number: 05-03-16  
 Rule ID(s): 6186  
 File Date: 5/6/16  
 Effective Date: 8/4/16

# Rulemaking Hearing Rule(s) Filing Form

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

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

<b>Agency/Board/Commission:</b>	Department of Commerce and Insurance
<b>Division:</b>	Division of Fire Prevention
<b>Contact Person:</b>	Joseph Underwood
<b>Address:</b>	500 James Robertson Parkway, Davy Crockett Tower
<b>Zip:</b>	37243
<b>Phone:</b>	615-741-3899
<b>Email:</b>	Joseph.Underwood@tn.gov

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

- Amendment  
 New  
 Repeal

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

Chapter Number	Chapter Title
0780-02-02	Codes and Standards
Rule Number	Rule Title
0780-02-02-.01	Adoption By Reference
0780-02-02-.02	Application (REPEALED)
0780-02-02-.03	Retroactive Enforcement
0780-02-02-.04	Conflicts
0780-02-02-.05	Local Ordinances

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

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

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0780-02-02-.01 Adoption by Reference  
0780-02-02-.02 Application Repealed  
0780-02-02-.03 Retroactive Enforcement

0780-02-02-.04 Conflicts  
0780-02-02-.05 Local Ordinances

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

- ~~(1) Unless otherwise provided by applicable law or the provisions of this chapter, the required minimum standards for fire prevention, fire protection and building construction safety in the State of Tennessee shall be those prescribed in the following publications:~~
- ~~(a) Except for Chapter 11 pertaining to accessibility and Chapter 27 pertaining to electrical requirements and the International Electrical Code, ICC International Building Code, 2006 edition, including ICC International Mechanical Code, 2006 edition, published by the International Code Council, Inc., 500 New Jersey Avenue Northwest, 6th Floor, Washington, D.C., 20001.~~
- ~~(b) ICC International Fire Code, 2006 edition, published by the International Code Council, Inc., 500 New Jersey Avenue Northwest, 6th Floor, Washington, D.C. 20001.~~
- ~~(c) For state buildings, educational occupancies and any other occupancy requiring an inspection by the state fire marshal for initial licensure as defined by the 2006 edition of the International Building Code, Life Safety Code (NFPA No. 101-2006), 2006 edition, published by the National Fire Protection Association, 1 Batterymarch Park, Quincy, Massachusetts 02269-9101.~~
- ~~(d) To lead by example, for state buildings, in lieu of Chapter 13 of the International Building Code, 2006 edition, ASHRAE Standard 90.1, 2007 edition, published by the American Society of Heating, Refrigerating, and Air Conditioning Engineers, 1791 Tullie Circle NE, Atlanta, GA 30329.~~
- ~~(2) Paragraph (1) of this rule shall not be construed as adopting any provision of the cited publications which establishes:~~
- ~~(a) an optional or recommended, rather than mandatory, standard or practice; or~~
- ~~(b) any agency, procedure, fees or penalties for administration or enforcement purposes inconsistent with these rules.~~
- (1) Unless otherwise provided by applicable law or the provisions of this chapter, the required minimum standards for fire prevention, fire protection and building construction safety in the state of Tennessee shall be those prescribed in the following publications:
- (a) International Building Code (IBC), 2012 edition, published by the International Code Council (ICC), except for:
1. Chapter 11, Accessibility; and,

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

- (b) The International Fuel Gas Code (IFGC), 2012 edition, published by the International Code Council (ICC);
- (c) The International Mechanical Code (IMC), 2012 edition, published by the International Code Council (ICC);
- (d) The International Plumbing Code (IPC), 2012 edition, published by the International Code Council (ICC);
- (e) The International Property Maintenance Code (IPMC), 2012 edition, published by the International Code Council (ICC);
- (f) The International Fire Code (IFC), 2012 edition, published by the International Code Council (ICC);
- (g) The International Energy Conservation Code (IECC), 2012 edition, published by the International Code Council (ICC), except that the provisions of the International Energy Conservation Code, 2006 edition, shall apply to the following occupancy classifications as defined by the International Building Code (IBC), 2012 edition:
  - 1. Moderate-hazard factory industrial, Group F-1;
  - 2. Low-hazard factory industrial, Group F-2;
  - 3. Moderate-hazard storage, Group S-1; and,
  - 4. Low-hazard storage, Group S-2;
- (h) The International Existing Building Code (IEBC), 2012 edition, published by the International Code Council (ICC);
- (i) For state buildings, educational occupancies and any other occupancy requiring an inspection by the state fire marshal for initial licensure, NFPA 101 Life Safety Code, 2012 edition, published by the National Fire Protection Association (NFPA); and,
- (j) No provision of the preceding cited publications shall be adopted that conflicts with:
  - 1. The installation and service standards of portable fire extinguishers and fixed fire extinguisher systems in Tenn. Comp. R. & Regs. 0780-02-14-.02; and,
  - 2. The standards for engaging in the liquefied petroleum gas business in Tenn. Comp. R. & Regs. 0780-02-17-.02.

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

- (a) an optional or recommended, rather than mandatory, standard or practice; or,
- (b) any agency, procedure, fees or penalties for administration or enforcement purposes inconsistent with the statute or rules.

**Authority:** T.C.A. §§ 68-120-101, and 68-120-101(a) and (e), 68-102-113, and 68-102-113(a) and (e).

**0780-02-02-.02 APPLICATION. Repealed.**

~~(1) The provisions of the codes adopted by reference in rule 0780-02-02-.01 shall govern the manner in which:~~

- ~~(a) the codes are applied to new construction and existing buildings.~~
- ~~(b) occupancies and types of construction are classified for the purpose of determining minimum code requirements; and~~
- ~~(c) the specific requirements of the codes may be modified to permit the use of alternate materials or methods of construction.~~

Authority: ~~T.C.A. §§53-2413 and Chapter 857, Public Acts of 1982, T.C.A. §§ 68-102-113 and 68-120-101.~~

#### **0780-02-02-.03 RETROACTIVE ENFORCEMENT.**

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

Authority: ~~T.C.A. §§53-2413, 68-102-113, 68-120-102, and Chapter 857, Public Acts of 1982, 68-102, 113, 68-120-101 and 68-120-102.~~

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

- (1) In the event of a conflict or inconsistency between the standards codes adopted by reference in Tenn. Comp. R. & Regs. rule 0780-02-02-.01:
  - (a) the provisions of the International Building Code (IBC) shall prevail if such conflict or inconsistency relates to building height, building area restrictions or construction type;
  - (b) the provisions of the Tennessee Public Building Accessibility Act, T.C.A. § 68-120-201, et seq., shall prevail if such conflict or inconsistency relates to accessibility; and,
  - (c) the more stringent ~~code~~ provision shall prevail in all other cases.
- (2) In the event of a conflict or inconsistency between either standard code adopted by reference in rule Tenn. Comp. R. & Regs. 0780-02-02-.01 and Chapter 0780-02-01 (Electrical Installations) of the Rules and Regulations of the State of Tennessee, the provisions of Chapter Tenn. Comp. R. & Regs. 0780-02-01 (Electrical Installations) shall control/prevail.
- (3) Nothing in this rule shall abrogate any right of appeal granted under Tenn. Code Ann., Title 68, Chapters 102 and 120.

Authority: T. C. A. § 68-102-113 (a) and (e) and 68-120-101(a) and 68-120-106.

#### **0780-02-02-.05 LOCAL ORDINANCES.**

Except as provided in Tenn. Code Ann. T.C.A. § 68-18120-101, or otherwise approved in writing by the state fire marshal, no city, county, town, municipal corporation, metropolitan government, or political subdivision of this State of Tennessee shall adopt or enforce any ordinance prescribing less stringent standards of fire prevention, fire protection, or building construction safety than those established hereunder. A city, county, town, municipal corporation, metropolitan government, or

political subdivision of the state of Tennessee that has adopted an edition of a building construction or fire safety standard within seven (7) years of the most current published edition shall be deemed to be in compliance with this chapter.

Authority: T.C.A. ~~§§58-2413, 68-17-113, 68-18-101, and Chapter 857, Public Acts of 1982.~~ 68-102-113, 68-120-101 and 68-120-106.

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

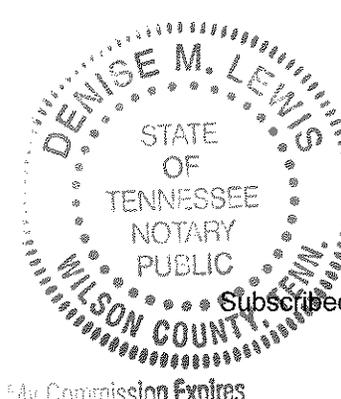
Board Member	Aye	No	Abstain	Absent	Signature (if required)
Not Applicable					

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Commissioner of Commerce and Insurance (board/commission/ other authority) on 1/25/16 (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: 06/26/15

Rulemaking Hearing(s) Conducted on: (add more dates). 08/19/2015



Date: 1/25/16

Signature: Julie Mix McPeak

Name of Officer: Julie Mix McPeak

Title of Officer: Commissioner of Commerce and Insurance

Subscribed and sworn to before me on: 1/25/16

Notary Public Signature: Denise 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.

Herbert H. Slatery III  
 Herbert H. Slatery III  
 Attorney General and Reporter  
4/29/2016  
 Date

**Department of State Use Only**

Filed with the Department of State on: 5/6/16

Effective on: 8/4/16

Tre Hargett  
 Tre Hargett  
 Secretary of State

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

DEPARTMENT: Labor and Workforce Development

DIVISION: Bureau of Workers' Compensation

SUBJECT: Case Management Rules

STATUTORY AUTHORITY: Tennessee Code Annotated, Sections 50-6-122 and 50-6-123

EFFECTIVE DATES: August 29, 2016 through June 30, 2017

FISCAL IMPACT: Local governments have the option to accept the provisions of the workers' compensation laws pursuant to T.C.A. § 50-6-106(6), but are not required to do so. For those local governments that do accept the provisions of the workers' compensation laws, the fiscal impact of the rule amendments will be minimal as these are largely procedural rules. The state government is subject to some provisions of the workers' compensation laws, but not all, and will not be impacted by these rule amendments.

STAFF RULE ABSTRACT: These rulemaking hearing rules provide changes to the existing case management rules.

## Public Hearing Comments

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

## PUBLIC COMMENTS AND RESPONSES

Comment: Proposed Rule 0800-02-07-.03 regarding the assignment of a case manager being made within seven (7) business days for non-catastrophic injuries: this time frame is too short and may not require case management at all.

Response: The Bureau agrees with this comment. Time frames for non-catastrophic injuries are too tight. This section has been amended upon review by the Bureau to reflect the changes suggested by this comment.

Comment: Proposed Rule 0800-02-07-.03 is too restrictive regarding face-to-face meetings where there has been a non-catastrophic injury. Face-to-face meetings should not be required regarding non-catastrophic injuries.

Response: The Bureau agrees in part with this comment. There should be more flexibility in face-to-face meetings and times. The Rule has been amended. However, there should be at least one face-to-face meeting in all cases involving case management.

Comment: Proposed Rule 0800-02-07-.04 regarding the prohibition on the case manager to provide a written panel of physicians is inconsistent with the principles of case management found elsewhere in the rules.

Response: The Bureau does not agree with this comment. If the case manager developed and presented a defective panel to the injured worker, the penalty would fall on the employer and/or carrier. The case manager should be a neutral facilitator and should be the messenger of the document. Case managers may advise adjusters on the formation of a panel.

Comment: Proposed Rule 0800-02-07-.04 concerning the prohibition on the case manager to question the physician or employee regarding compensability is inconsistent with the principles of workers' compensation. There will likely be questions of what is appropriate medical care for a compensable injury.

Response: The Bureau does not agree with the comment regarding the questioning of the physician about compensability. Questions concerning the extent of the injury and treatment of the patient are appropriate, but questions regarding compensability or about payment by the case manager to the physician or patient are inappropriate.

Comment: Proposed Rule 0800-02-07-.01 regarding the definition of "case manager" should be amended to add Certified Rehabilitation Counselor (CRC) as a qualifying credential. Also, newly-registered Case Manager Assistants should be allowed to perform case management duties under the direct supervision of a Registered Case Manager and must obtain certification within 24 months.

Response: The Bureau disagrees with the comment regarding the CRC as a stand-alone designation. The Bureau agrees with the comment concerning Case Manager Assistants and has made changes regarding certification of Case Manager Assistants.

Comment: Proposed Rule 0800-02-07-.04 should be amended to allow the case manager to request an impairment rating from the physician, so long as the case manager does not engage the physician in discussions on what impairment rating should be applied to an injured worker.

Response: The Bureau disagrees with this comment. Even indirect questions by the case manager to the physician give an appearance to the injured worker and/or counsel for the injured worker that the case manager is on the side of the employer and insurance carrier. Avoiding the appearance of impropriety is prudent.

Comment: Proposed Rule 0800-02-07-.04 should be amended to clarify the penalty process and appeal process within the Bureau regarding the civil penalties in this section.

Response: The Bureau agrees with this comment. The Bureau's current penalty rules have an appeals process in place with a contested case hearing through the UAPA process, and Proposed Rule 0800-02-07-.05 has been amended to clarify the penalty and appeal process.

Comment: Regarding the registration and renewal fees, the Bureau should take into consideration additional fees incurred by a case manager, such as TN nursing license, CCM renewal, etc.

Response: The Bureau agrees with the comment and understands the financial implications of these amended case management rules. Therefore, current registrants at the time of the adoption of these rules would only pay the renewal fee.

Comment: Will there be any thought to "grandfathering" the Case Manager Assistant (CMA) who is currently working in Tennessee as a CMA?

Response: The Bureau disagrees with this suggestion. The CMA will have 24 months to obtain certification.

Comment: Under Rule 0800-02-07-.07(1) and (10) do not mirror 0800-02-07-.02(4) regarding cooperation with the case manager.

Response: The Bureau disagrees. Rule 0800-02-07-.07 discusses cooperation with the case manager, while Rule 0800-02-07-.02(4) deals with information to be provided to the case manager.

Comment: Currently the case manager has the practice of sending the C30A form to the physician in order that the physician may address the rating. Can the case manager continue this practice, sending the form and any supporting correspondence to the physician?

Response: The Bureau disagrees with this comment and with this practice of the case manager discussing matters unrelated to medical care with the physician.

Comment: Injured workers sometimes change medical appointments without notifying the case manager, and when the doctor's office notifies the case manager, the case manager will change the appointment back to the original date and time. As long as the case manager discusses the change in the appointment time with the injured worker prior to the appointment, can the appointment be changed by the case manager?

Response: The Bureau agrees with this comment, but the rule provides that the rescheduling of appointments when a case manager is assigned should be a reciprocal responsibility of notification. No change is needed in the rules.

Comment: How will there be due process regarding the penalty provisions in these rules?

Response: The Bureau agrees with this concern, and the Bureau's penalty program is already in place and will investigate and determine whether penalties are appropriate. Aggrieved parties may appeal through a contested case hearing in accordance with T.C.A. § 4-5-301 and the Bureau's administrative rules.

Comment: Can a CRC be added as a definition of who can do case management in Tennessee?

Response: The Bureau agrees with this comment. A CRC can be a Case Management Assistant as defined in 0800-02-07-.01(3)(c).

Comment: By phasing out case manager assistants, the insurance carrier will have no leeway to hire someone and train the person while in the process of being certified.

Response: The Bureau agrees in part with this comment. The rules have been amended to not only allow Case Manager Assistants to continue their duties for 24 months from the effective date of the rules if under the supervision of a Registered Case Manager but also for new Case Manager Assistants to provide services while under the supervision of a Registered Case Manager during the training period.

Comment: The terms "issues of compensability" and "non-rehabilitative activity" in Rule 0800-02-07-.04 need further definition and are overly broad.

Response: The Bureau disagrees with this comment. The Bureau relies upon the ordinary meaning of these words in everyday usage.

Comment: The term "recording" needs further definition.

Response: The Bureau disagrees with the comment. The term "recording" is broad enough to include electronic recording but may also include notes taken in writing.

Comment: The proposed rules require the Medical Director to report unprofessional conduct or malpractice to the Administrator of the Bureau and to the Board of Nursing. This means the Medical Director is making these determinations without the right to due process.

Response: The Bureau agrees with the comment. The Board of Nursing has its own administrative processes, as does the Bureau's penalty unit.

Comment: The registration and renewal fees are much higher than in other states. For independent and part-time case managers, this could create undue financial burdens. A graduated schedule of fees would be recommended based upon full time, part time, over the age of 65, or inactive but wanting license to remain current.

Response: The Bureau neither agrees nor disagrees with the comment. The fees are about average from a review of other states. The Bureau has amended these fees to \$100.00 for the initial registration fee and \$50.00 for the renewal fee. The part-time status would be difficult to monitor.

Comment: Section (2) in proposed Rule 0800-02-07-.03 should be deleted to allow employers to use case management as needed to help their injured workers without the concern of incurring unnecessary expenses. The time frames involved are too short and the face-to-face meeting requirements are inefficient and impractical.

Response: The Bureau agrees with the comment regarding the time frames and numbers of visits for non-catastrophic injuries and has amended this section in response to this comment.

Comment: All case management vendors should be URAC accredited.

Response: The Bureau disagrees with this comment. URAC is an organizational certification, not individual, although within their certification are individual criteria. It would be a stretch for most of the case management organizations to pay for URAC accreditation, which is approximately \$27,000 for a two-year accreditation.

Comment: Insurance adjusters should be licensed in Tennessee.

Response: The Bureau neither agrees nor disagrees with these comments. Licensing of adjusters is beyond the scope of these rules.

Comment: If case management organizations are required to hire nurses with a CCM credential, where will the pool of applicants come from?

Response: The Bureau neither agrees nor disagrees with this comment. The concern is valid. The pool of medical care providers is a concern, but the rule has been amended to address this concern and to allow a 24-month training period for Case Manager Assistants to become Certified Case Managers.

Comment: Instead of requiring CCM designation upon hire and additional fees and CEUs, if the intent of these rules is to address concerns with problematic case managers, reporting these individuals to their respective governing bodies (such as the Board of Nursing) or retract a state registration if there is an infraction would be a better course of action.

Response: The Bureau agrees with the comment in part and disagrees in part. Concerning fees, the Bureau has reduced the fees accordingly as a result of these concerns. Concerning training and the provision of appropriate medical care, the Bureau believes that requiring CCM designation is an important method to insure quality medical care in Tennessee.

Comment: The case management amendments are well written and justified.

Response: The Bureau agrees with this comment.

### 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.

### STATEMENT OF ECONOMIC IMPACT TO SMALL BUSINESSES

1. The type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, or directly benefit from the proposed rule: The amended rules will affect small employers under the Tennessee Workers' Compensation Laws, which would be employers with at least five employees, or in the construction industry with at least one employee. The rules address medical case management and the requirements for case managers.
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: Generally, record keeping and administrative duties will be performed by employers' insurance carriers or third party administrators. Accordingly, any administrative impact to small businesses should be minimal.
3. A statement of the probable effect on impacted small businesses and consumers: Any impact on small businesses and consumers should be minimal.
4. A description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and objectives of the proposed rule that may exist, and to what extent the alternative means might be less burdensome to small business: There are no less burdensome methods to achieve the purposes and objectives of these rules.
5. Comparison of the proposed rule with any federal or state counterparts: None.
6. Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule: It would be detrimental to small businesses that fall under the Tennessee Workers' Compensation Laws to be exempt from these rules because they are intended to ensure the effective administration of claims. It is expected that these rules would promote better outcomes in workers' compensation claims which should prove beneficial to the overall health of the Tennessee economy.

### 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)

Local governments have the option to accept the provisions of the workers' compensation laws pursuant to T.C.A.

§ 50-6-106(6), but are not required to do so. For those local governments that do accept the provisions of the workers' compensation laws, the impact of the rule amendments will be minimal.

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Sequence Number: 05-19-16  
 Rule ID(s): 6190  
 File Date: 5/31/16  
 Effective Date: 8/29/16

# 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*

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

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

- Amendment
- New
- Repeal

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

**Amendment**

Chapter Number	Chapter Title
0800-02-07	Case Management
Rule Number	Rule Title
0800-02-07-.01	Definitions
0800-02-07-.02	Case Management System
0800-02-07-.03	Case Management Threshold
0800-02-07-.04	Elements of Case Management
0800-02-07-.05	Investigation of Complaints; Sanctions and Appeals of Agency Decisions
0800-02-07-.06	Confidentiality of Records
0800-02-07-.07	Case Management Information

**New**

Chapter Number	Chapter Title
0800-02-07	Case Management
Rule Number	Rule Title
0800-02-07-.08	Registration and Continuing Education Requirements

(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>)

#### Substance of Proposed Amendments

Rules 0800-02-07-.01 through 0800-02-07-.07 are amended by deleting their current text and substituting instead the following language so that each rule reads as follows:

#### Rule 0800-02-07-.01 Definitions – General

As used in this chapter, the following terms are used as follows:

- (1) "Administrator" means the administrator of the Tennessee Bureau of Workers' Compensation.
- (2) "Bureau" means the Tennessee Bureau of Workers' Compensation.
- (3) "Case management" means medical case management or the ongoing coordination of medical care services provided to an injured or disabled employee and for the purpose of this chapter shall only be provided by a registered case manager or case manager assistant under the direct supervision of a registered case manager.
- (4) "Case manager" means an individual who provides or supervises the provision of case management services under this chapter and who is either:
  - ~~(a) A physician licensed under T.C.A. Title 63, Chapter 6; or~~
  - (a) A licensed registered nurse, licensed under T.C.A., Title 63, Chapter 7, who possesses one or more of the following:
    1. A master's degree in vocational rehabilitation counseling; or
    2. Certification as a Certified Disability Management Specialist (CDMS); or
    3. Certification as a Certified Rehabilitation Registered Nurse (CRRN); or
    4. Certification as a Certified Occupational Health Nurse (COHN); or
  - ~~(b) Certified as a Certified Case Manager (CCM). Any individual currently providing case management services in Tennessee and pursuing certification as a Certified Case Manager may continue to provide these services through February 15, 1994.~~
- (5) "Case manager assistant" means an individual who provides case management services under the direct supervision of a case manager and who meets one of the following:
  - (a) The individual is a registered nurse, licensed under TCA, Title 63, Chapter 7; or
  - (b) The individual possesses one of the following:
    1. A master's degree in vocational rehabilitation counseling; or
    2. Certification as a Certified Insurance Rehabilitation Specialist (CIRS). (Note: This certification is now called "Certified Disability Management Specialist"(CDMS); or
    3. Certification as a Certified Rehabilitation Counselor (CRC).
  - (c) Registered Case Manager Assistants may continue their present duties under direct supervision of a Registered Case Manager for 24 months from the date of the effect of these rules. A Case Manager Assistant, at the end of a 24-month period must be certified by one of the categories under the definition of a Case Manager or their registration with the Bureau will terminate. Persons who are not current Case Manager Assistants shall have a 24-month

period from the date they become Case Manager Assistants under the supervision of a Registered Case Manager to obtain certification.

(6) "Catastrophic injury" means any injury which is one of the following:

- (a) Spinal cord injury involving severe paralysis of an arm, a leg, or the trunk;
- (b) Amputation of an arm, a hand, a foot, or a leg involving the effective loss of use of that appendage;
- (c) Severe brain or closed head injury as evidenced by:
  - 1. Severe sensory or motor disturbances;
  - 2. Severe communication disturbances;
  - 3. Severe complex integrated disturbances of cerebral function;
  - 4. Severe disturbances of consciousness;
  - 5. Severe episodic neurological disorders; or
  - 6. Other conditions at least as severe in nature as any condition provided in subparagraphs 1 through 5 of this paragraph;
- (d) Second or third degree burns over 25 percent of the body as a whole or third degree burns to 5 percent or more of the face or hands; or
- (e) Total or industrial blindness.

(7) "Commissioner" means the Commissioner of the Department of Labor and Workforce Development.

(8) "Contractor" means that organization or organizations referred to in T.C.A. § 50-6-124 [Section 8 of Public Chapter 900 of the Acts of 1992].

(9) "Department" means the Tennessee Department of Labor and Workforce Development.

(10) "Medical Director" means the Medical Director appointed by the Commissioner of Labor and Workforce Development Administrator of the Bureau of Workers' Compensation pursuant to T.C.A. § 50-6-126.

Authority: T.C.A. §§ 4-5-202, 50-6-102, 50-6-122, 50-6-123, 50-6-124, 50-6-126 [Section 2 of Chapter 900 of the Public Acts of 1992.], 50-6-233, and Public Chapters 282 & 289 (2013). Administrative History: Original rule filed January 28, 1993; effective May 13, 1993. Amended by Public Chapter 467; effective May 31, 1993. Amendment filed March 20, 2007; effective July 27, 2007. Amendment filed December 26, 2013; effective March 26, 2014.

#### Rule 0800-02-07-.02 Case Management System

- (1) ~~An~~Each insurer who provides workers' compensation insurance regulated by the provisions of T.C.A., Title 50, Chapter 6, a or self-insured employer, may provide for a system of case management for cases involving compensable injuries under T.C.A., Title 50, Chapter 6.
  - (a) Any insurer providing workers' compensation insurance under T.C.A., Title 50, Chapter 6, may provide for or contract for case management services when such services are provided.
  - (b) The insured employer may choose to provide case management services itself or through a third party administrator. If so, the insured employer shall inform its insurer in writing of its choice.
- (2) ~~The Commissioner~~ Administrator may provide or contract for certain case management services. The case management services which may be provided or contracted for may include, but not limited to, providing:

- (a) A review of an individual case when an employee, employer, or health care provider seeks review of a decision or action by the employer's case manager by the Bureau of Workers' Compensation;
  - (b) A review of case management services provided by case managers or case management firms for an employer for workers' compensation cases; and
  - (c) Development of reports and summaries of case management of medical care and services in workers' compensation cases in Tennessee.
- (3) It shall be the responsibility of every employer, who elects to provide case management services to injured workers, either directly or through its insurer or third party administrator, who elects to provide case management services to injured workers to give basic information to and encourage the injured worker's participation in case management. It shall further be the responsibility of those parties to inform the injured worker of the identity of the contractor and of the case management providers for workers' compensation cases for the employer, and of the possibility that the injured worker will be contacted by the case management provider for the employer. Those parties shall also inform the injured worker that provision of information to the contractor and to the case management provider for the employer for purposes of case management is strongly encouraged.
- (4) In all cases in which the employer uses case management services, it is the responsibility of the injured worker to cooperate with the case manager in all reasonable requests including, but not limited to, requests for information, provider appointments (and changes to provider appointments) and other communication relevant to helping the employee progress toward the best medical outcome.

Authority: T.C.A. §§ 4-5-202, 50-6-102, 50-6-122, 50-6-123, 50-6-126, 50-6-233 [Sections 3 and 7 of Chapter 900 of the Public Acts of 1992.], and Public Chapters 282 & 289 (2013). Administrative History: Original rule filed January 28, 1993; effective May 13, 1993. Amendment filed March 20, 2007; effective July 27, 2007. Amendment filed December 26, 2013; effective March 26, 2014.

Rule 0800-02-07-.03 Case Management Threshold

- (1) Catastrophic Injuries. An employer or insurer is encouraged, but not required, to provide case management services if such services would prove to be beneficial. An employer or insurer should provide case management services in all cases where an employee has suffered a catastrophic injury. The employer or insured should assign a case manager within seven (7) calendar days of receiving notice that the employee has suffered a catastrophic injury. There shall be one face-to-face meeting within fourteen calendar days after the assignment. After the initial meeting, there should be face-to-face meetings or other communications as necessary for the progress of the patient until such time as case management services are concluded. Should an employee experience a significant decline in the medical condition, there should be a face-to-face meeting between the case manager and the employee within fourteen (14) calendar days of notification of such a change. Documentation evidencing the first face-to-face meetings shall be submitted to the Medical Director of the Tennessee Bureau of Workers' Compensation within thirty (30) calendar days of the first meeting, on the Bureau's required case management form.
- (2) In all cases in which case management is undertaken, if the employee suffered a catastrophic injury there shall be at least one face-to-face meeting between the case manager and the employee within fourteen (14) calendar days after the date of injury. After the initial meeting, there shall be face-to-face meetings between the case manager and the employee at least every three months thereafter for the first year and at least every six months during the second year. Should an employee suffering a catastrophic injury experience a significant change in medical condition, there shall be a face-to-face meeting between the case manager and the employee within fourteen (14) calendar days of such a change. If the employee suffered a non-catastrophic injury, then there shall be at least one face-to-face meeting within twelve (12) weeks of the date of injury. Documentation evidencing the face-to-face meetings shall be submitted to the Medical Director of the Tennessee Department of Labor and Workforce Development within a reasonable time.
- (2) Non-catastrophic Injuries. For non-catastrophic injuries, there should be one initial face-to-face meeting if and when a case manager is assigned to the claim. This should occur within 14 days of the assignment. It is appropriate to consider case management services if medical expenses over \$10,000

(ten thousand dollars), an inpatient hospitalization, or lost work time over three months is anticipated. Further meetings and communication should occur as the case warrants. Documentation evidencing the initial face-to-face meetings shall be submitted to the Medical Director of the Tennessee Bureau of Workers' Compensation within thirty (30) calendar days if medical expenses over \$10,000 (ten thousand dollars), an inpatient hospitalization, or lost work time over three months is anticipated, on the Bureau's required case management form.

Authority: T.C.A. §§ 4-5-202, 50-6-102, 50-6-122, 50-6-123, 50-6-233(c)(6) [Section 3 of Chapter 900 of the Public Acts of 1992.] Administrative History: Original rule filed January 28, 1993; effective May 13, 1993. Amendment filed May 13, 1997; effective July 27, 1997. Amendment filed March 20, 2007; effective July 27, 2007.

Rule 0800-02-07-.04 Elements of Case Management

- (1) Case management services shall include, but not be limited to, the following elements required in T.C.A. §50-6-123 [Section 7(b) of Public Chapter 900]:
  - (a) Developing a treatment plan to provide appropriate medical services to an injured or disabled employee;
  - (b) Systematically monitoring the treatment rendered and the medical progress of the injured or disabled employee;
  - (c) Assessing whether alternate medical care services are appropriate and delivered in a cost-effective manner based on acceptable medical standards;
  - (d) Ensuring that the injured or disabled employee understands and is following the prescribed medical care plan; and
  - (e) Formulating a plan for return to work with due regard for the employee's recovery and restrictions and limitations, if any.

~~2) a) Case management services under this chapter may only be provided by a case manager or by a case manager assistant under the direct supervision of a case~~

~~b) A case manager shall be responsible for any case management services rendered by a case manager assistant. A case manager shall not permit a case manager assistant to render inappropriate, inadequate, negligent, or unprofessional services. Before rendering case management services, each case manager assistant shall be assigned to a case manager who shall be responsible for all services related to~~

~~c) The contractor shall report any instances of inappropriate case management services or inadequate supervision to the Medical Director. The Medical Director shall report any instance of failure to appropriately supervise a case manager assistant, negligence or other unprofessional or malpractice conduct by a case manager to the Commissioner and to either the Board of Medical Examiners or the Board of Nursing for appropriate disciplinary proceedings.~~

(2) A case manager shall not:

- (a) Prepare the panel of physicians or influence the employee's choice of physician;
- (b) Determine whether the case is work related;
- (c) Question the physician or employee regarding issues of compensability;
- (d) Conduct or assist any party in claims negotiation, investigation or any other non-rehabilitative activity;

- (e) Advise the employee as to any legal matter including settlement options or procedures, monetary recovery, claims evaluation or the applicability of the workers' compensation act to the employee's claim;
  - (f) Accept any compensation or reward from any source as the result of settlement;
  - (g) Discuss with the employee or physician what the impairment rating should be;
  - (h) Reschedule medical appointments without first discussing the scheduling change with the employee;
  - (i) Refuse to provide case management reports to parties to the claim;
  - (j) Assist in any way in recording the employee's activity for the purposes of disproving the employee's claim; or
  - (k) Deny or authorize treatment for the purpose of guaranteeing prepayment or precertification.
- (3) Any case manager that commits any of the actions provided in paragraph (2) may be assessed a civil penalty of up to five hundred dollars (\$500) for each action committed. The Administrator shall have discretion to suspend the registration of any case manager assessed more than three (3) penalties in any two (2) year period for up to sixty (60) days. The Administrator shall have discretion to suspend the registration of any case manager for up to one (1) year for offenses after the three penalty limit within any two (2) period. Any case manager suspended by the Administrator pursuant to this paragraph shall not provide case management services to any employee receiving treatment for a workers' compensation injury during the period of suspension. Any case manager who has had their registration suspended by the Administrator who provides case management services during the period of suspension shall be assessed a civil penalty of one thousand dollars (\$1,000) and shall have their registration suspended for six (6) months.
- (4) Failure to submit the required forms within thirty (30) days of referral and within thirty (30) days of closing the case may result in a civil penalty of one hundred dollars (\$100) per occurrence.
- (5) It is the intent of the case management system to expedite communication and provide a conduit for improving the efficiency and timeliness of care in all cases where case management is undertaken. To that end, all providers, injured workers, adjusters and employers should utilize case management to its fullest extent and provide expedited responses to the case manager's requests.

Authority: T.C.A. §§ 4-5-202, 4-5-301, 50-6-102, 50-6-118, 50-6-122, 50-6-123, 50-6-126, 50-6-233, [Section 7 of Chapter 900 of the Public Acts of 1992.] Administrative History: Original rule filed January 28, 1993; effective May 13, 1993. Amendment filed March 20, 2007; effective July 27, 2007. Amendment filed December 26, 2013; effective March 26, 2014.

**Rule 0800-02-07-.05 Investigation of Complaints; Sanctions and Appeals of Agency Decisions**

- (1) ~~The Medical Director may inquire into or investigate instances where the medical treatment or the physical rehabilitation provided appears to be deficient or incomplete. Upon a complaint from an injured employee, employer, health care provider, or a referral from the contractor, and upon reasonable cause, the Medical Director may investigate the allegations.~~
- (2) ~~In cases where the inquiry or investigation substantiates that medical treatment or physical rehabilitation is deficient or incomplete, the Medical Director shall recommend appropriate corrective action.~~
- (1) Any physician, other provider or an injured employee who is receiving case management services, may report instances of inappropriate case management services to the Bureau of Workers' Compensation Medical Director. The Medical Director may investigate and report the results of the investigation to the Administrator. At the discretion of the Administrator, a report may be sent to the Board of Nursing or other certifying board for appropriate disciplinary proceedings.

- (2) Failure by an party to comply with any requirement in this Chapter 0800-02-07 shall subject such party to a penalty of not less than one hundred dollars (\$100.00) nor more than one thousand dollars (\$1,000.00) per violation at the discretion of the Administrator. The Bureau Division may also institute a temporary or permanent suspension of the right to perform case management services for workers' compensation claims, if the utilization review agent has established a pattern of violations.
- (3) An agency decision assessing sanctions and/or civil penalties shall be communicated to the party to whom the decision is issued, and the party to whom it is issued shall have fifteen (15) calendar days from the date of issuance to either appeal the decision pursuant to the procedures provided for under the Uniform Administrative Procedures Act, T.C.A. §§ 4-5-101, et seq., or to pay the assessed penalties to the Bureau or otherwise comply with the decision.
- (4) In order for a party to appeal an agency decision assessing sanctions and/or civil penalties, the party must file a petition with the Commissioner within fifteen (15) calendar days of the issuance of the decision. This petition shall be considered a request for a contested case hearing within the Department pursuant to the Uniform Administrative Procedures Act, T.C.A. §§ 4-5-101, et seq., and the procedural rules of Chapter 0800-02-13 are incorporated as if set forth fully herein. The Department is authorized to conduct the hearing pursuant to T.C.A. § 50-6-118.
- (5) If the agency decision assessing sanctions and/or civil penalties is not appealed within fifteen (15) calendar days of its issuance, the decision shall become a final order of the Department not subject to further review.

Authority: T.C.A. §§50-6-123 and 50-6-126 [Sections 7 and 10 of Chapter 900 of the Public Acts of 1992.]  
 Administrative History: Original rule filed January 28, 1993; effective May 13, 1993.

#### Rule 0800-02-07-.06 Confidentiality of Records

- (1) Subject to any applicable requirement of law concerning confidentiality of records, a case manager or a firm providing case management services shall provide the ~~Commissioner~~ Administrator, or the ~~Commissioner's~~ Administrator's designee, with any appropriate case management records or permit the ~~Commissioner~~ Administrator or the ~~Commissioner's~~ Administrator's designee to inspect, review, or copy such records in a responsible manner.
- (2) For case management purposes, the ~~Department of Labor and Workforce Development~~ Bureau of Workers' Compensation and its contractor(s) will maintain any required confidentiality of any personally-identifying information concerning employees claiming workers' compensation benefits which the ~~Department~~ Bureau may obtain. Provision of these records pursuant to this rule shall not constitute a waiver of an applicable privilege or confidentiality.

Authority: T.C.A. §§ 4-5-202, 50-6-102, 50-6-122, 50-6-123, 50-6-126, 50-6-233, and Public Chapters 282 & 289 (2013); [Section 2 of Chapter 900 of the Public Acts of 1992.] Administrative History: Original rule filed January 28, 1993; effective May 13, 1993. Amendment filed March 20, 2007; effective July 27, 2007. Amendment filed December 26, 2013; effective March 26, 2014.

#### Rule 0800-02-07-.07 Case Management Information

- (1) The contractor or the employer's case management provider shall have the right to contact the injured or disabled worker, employer, insurer, third party administrator, legal representative, and all health care providers involved in the case. The contacted parties shall have the duty and responsibility to cooperate and provide information to the contractor or employer's case management provider, to the same extent as provided in Rule 0800-02-06-.02 of these rules.
- (2) All injured or disabled workers and their legal representatives are required to cooperate with the contractor or employer's case management provider with respect to all reasonable requests for information necessary for case management purposes. The contractor shall report any refusal to cooperate to the Medical Director.
- (3) Any dispute concerning the reasonableness of any request for information may be submitted, in writing, to the Bureau of Workers' Compensation's Medical Director. The determinations of the Medical Director concerning the reasonableness of such requests are final.

- (4) Any party that fails to provide information pursuant to a request for information that the Medical Director has determined to be a reasonable request may be assessed a civil penalty of up to five hundred dollars (\$500).

Authority: T.C.A. §§50-6-123 [Section 7 of Chapter 900 of the Public Acts of 1992.] Administrative History: Original rule filed January 28, 1993; effective May 13, 1993.

New Rule

Rule 0800-02-07-.08 Registration and Continuing Education Requirements

- (1) The provision of case management services to employees who have suffered a workers' compensation injury is a privilege and no case manager or case manager assistant may provide case management services in workers' compensation cases in Tennessee unless the case manager or case manager assistant has registered with the Bureau and paid the appropriate fee.
- (a) All case managers and case manager assistants must complete the registration form provided by the Bureau and submit the form and pay the fee of one hundred dollars (\$100) to the Bureau. Case managers and case manager assistants who are currently registered shall be required to pay the renewal fee of fifty dollars (\$50) only when the renewal date occurs. The initial registration fee shall be due and payable commencing with existing renewal registration dates, beginning 90 days from the effective date of these rules.
- (b) Every two (2) years thereafter, all case managers and case manager assistants must complete a registration renewal form and submit the form and a renewal fee of fifty dollars (\$50) to the Bureau when the regular renewal date occurs.
- (c) Upon receipt of the completed form and fee, the Bureau shall review the registration and issue a registration letter to the case manager. A registration letter for a case manager assistant shall be sent to the supervising case manager as well as the case manager assistant. If the registration is rejected, the Bureau shall return to registration form and fee to the case manager.
- (d) The above-referenced fees shall be in effect for registrations received by the Bureau thirty (30) or more days from the effective date of these rules.
- (2) All case managers must undergo at least four (4) hours of continuing education every year that is specific to the treatment of injured workers, under the Tennessee Workers' Compensation law and procedures.
- (3) All case managers must complete the continuing education requirement before the case manager can renew their registration with the Bureau. No registration renewal form will be accepted by the Bureau unless the case manager has completed the continuing education requirement and supplied the Bureau with documentation.

Authority: T.C.A. §§50-6-123 [Section 7 of Chapter 900 of the Public Acts of 1992.] Administrative History: Original rule filed January 28, 1993; effective May 13, 1993.

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)

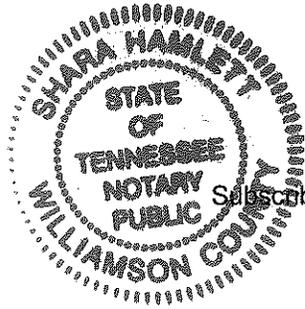
I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the (board/commission/other authority) on 10/27/2015 (date as mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State.

Date: October 27, 2015

Signature: Abbie Hudgens

Name of Officer: Abbie Hudgens

Title of Officer: Administrator, Bureau of Workers' Compensation



Subscribed and sworn to before me on: October 27, 2015

Notary Public Signature: Shara Hamlett

My commission expires on: January 24, 2016

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. Staty III  
 Herbert H. Staty III  
 Attorney General and Reporter  
5/24/2016  
 Date

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Filed with the Department of State on: 5/31/16

Effective on: 8/29/16

Tre Hargett  
 Tre Hargett  
 Secretary of State

## G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: University of Tennessee, Board of Trustees

DIVISION:

SUBJECT: Student Code of Conduct

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 49-9-209(e)

EFFECTIVE DATES: August 13, 2016 through June 30, 2017

FISCAL IMPACT: None

STAFF RULE ABSTRACT: In 2013, the University of Tennessee, Knoxville (UTK) initiated a comprehensive review of the Office of Student Judicial Affairs, the unit directly responsible for investigating and resolving issues concerning student conduct. The purpose of the review was to offer recommendations that would model best practices within the field of student conduct administration. The review team consisted of two external reviewers and three internal reviewers. The review team met with UTK faculty, staff, and students over the course of three (3) days in July 2013. In August 2013, the review team presented UTK with a report containing findings and recommendations.

As a result of the review team's findings and recommendations, UTK has implemented a number of changes to its student conduct administration over the past two years. UTK changed the name of the student conduct office to "Office of Student Conduct and Community Standards" (OSC), and the office adopted a new philosophy, a new mission statement, and new learning outcomes.

As part of this proposed rule, UTK now seeks to implement a new Student Code of Conduct, which addresses other recommendations of the review team. Key aspects of the new Student Code of Conduct include:

1. The new student conduct process will be less adversarial and legalistic and more developmental and

educational (e.g., UTK will no longer have law students serve as mock prosecutors and defense attorneys in a hearing that mimics a legal trial).

2. The University's discretion to address off-campus conduct is limited to certain circumstances.

3. Students have the right to be assisted by an advisor during all stages of the student conduct process.

4. OSC will conduct an Educational Conference with the student alleged to have committed misconduct (Respondent). During the Educational Conference, the Respondent will learn about the allegations and have the opportunity to respond to the allegations and ask questions about the allegations, possible sanctions, and the student conduct process. OSC will not determine sanctions before the Educational Conference.

5. OSC may propose alternative resolution, such as mediation, to resolve misconduct issues.

6. UTK re-evaluated the purposes, goals, effectiveness, and efficiency of the various student conduct boards, including the Greek Judicial Board. The new student conduct process includes a single student conduct board, which is composed of students, faculty, and staff (rather than only students). This change was made to allow the University community (students, faculty, and staff) to be involved in educating students and promoting institutional values.

7. The sanction of indefinite suspension has been eliminated and replaced with the sanction of deferred suspension. Developmental (educational) sanctioning options have been added.

8. The process for appealing a decision of the student conduct board has been simplified. Also, the elimination of the Student Life Council as an appellate body makes the appellate process less intimidating.

9. A new Good Samaritan/Amnesty policy encourages students to alert appropriate officials in the event of a health or safety emergency (e.g., a situation involving the abuse of alcohol or other drugs).

10. The new Code adds a policy on the retention and expungement of student disciplinary records. After a

student is no longer enrolled, OSC will disclose a student's disciplinary records to persons outside of OSC only if one of the following sanctions was imposed on the student while the student was enrolled: suspension; expulsion; withholding of degree; or revocation of degree. OSC will expunge the disciplinary records of a student seven (7) years after the student's graduation or last date of enrollment if the student did not receive a sanction of suspension or greater.

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

**Impact on Local Governments**

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

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

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Sequence Number: 05-06-16  
 Rule ID(s): 6187  
 File Date: 5/11/16  
 Effective Date: 8/13/16

# 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).*

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

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

- Amendment
- New
- Repeal

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

RULES  
OF  
THE UNIVERSITY OF TENNESSEE  
(KNOXVILLE)

CHAPTER 1720-04-03  
STUDENT CODE OF CONDUCT RIGHTS AND RESPONSIBILITIES

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

1720-04-03-01 Preamble.

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

- (4) The effectiveness of the student conduct process rests partially upon the participation of all members of the University community. Active participation in the process by students, faculty, and staff reflects a willingness to address the difficult issues brought before them for the betterment of individual students and the University community. This involvement is vital to the establishment of true community standards.
- (5) Authority and responsibility relating to the Code are delegated to the Vice Chancellor for Student Life, who has delegated certain authority and responsibility to the Office of Student Conduct and Community Standards ("OSC").
- (6) The University is committed to respecting students' constitutional rights. The Code shall be interpreted in a way that does not violate students' constitutional rights.
- (7) Students are responsible for being fully acquainted with and for complying with the Code, the applicable undergraduate or graduate catalog, the student handbook (Hilltopics), and other rules and policies relating to students.

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

1720-04-03-.02 Jurisdiction.

- (1) The Code applies to conduct that occurs on and off of University-controlled property. However, with respect to conduct that occurs off of University-controlled property, the University has the discretion to discipline a student for conduct that violates the Standards of Conduct only if the student's conduct: (1) occurs in connection with a University-affiliated activity, including, but not limited to, a clinical, field, internship, or in-service experience, or an overseas study program; (2) violates Section .04(1) (i.e., consists of academic dishonesty); (3) is prohibited by local, state, or federal law, and the conduct was committed within the Knoxville Area (or, for UT Space Institute students, the conduct was committed within Coffee County or Franklin County); (4) occurs in connection with a student organization's event; (5) involves another member of the University community; or (6) threatens, or indicates that the student poses a threat to, the health or safety of others or the security of any person's property, including, but not limited to, drug-related offenses, arson, battery, fraud, hazing, participation in group violence, rape, sexual misconduct, relationship violence, stalking, and theft.
- (2) Graduate or professional programs within the University may take separate and independent academic action against students for alleged violations of professional and/or ethical standards using procedures other than those contained in the Code.
- (3) Each student is responsible for his/her conduct from the date of application for admission to the University through the date the University awards the student a degree, even if the conduct occurs before classes begin or after classes end, during the academic year, during periods between terms of actual enrollment, and/or is not discovered by the University until after a degree is awarded.
- (4) Notwithstanding anything in the Code to the contrary, a student organization may be found responsible for a violation(s) of the Standards of Conduct based on the totality of the circumstances relating to the misconduct. This Section .02(4) is not intended to hold a student organization responsible for isolated violations of the Standards of Conduct by individual members of the student organization. The following criteria will be considered when determining whether a student organization will be charged with a violation(s) of the

Standards of Conduct (i.e., misconduct):

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

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

1720-04-03-03 Relationship Between the Code and Criminal Law.

- (1) Independent Action. The Code has been adopted in furtherance of the University's interests and serves to supplement, rather than substitute for, the enforcement of civil and criminal law. Accordingly, University disciplinary action may be instituted against a student charged with conduct that potentially violates both criminal law and the Standards of Conduct without regard to the pending status of criminal charges or civil litigation. At the discretion of the Director of OSC, disciplinary action relating to a violation of the Standards of Conduct may be carried out prior to, simultaneously with, or following criminal proceedings. Students alleged to have violated the Standards of Conduct may not challenge any aspect of the University's student conduct process on the grounds that criminal charges, civil litigation, or other University proceedings regarding the same incident are pending or have been terminated, dismissed, reduced, or have not yet been adjudicated.
- (2) University's Interaction with Other Entities. The University will cooperate with law enforcement and other agencies in the enforcement of criminal law on University-controlled property and in the conditions imposed by criminal courts for the rehabilitation of students who have violated the criminal law.

- (3) Withdrawals. If a Respondent voluntarily withdraws from the University before the conclusion of the student conduct process, OSC retains the right to investigate and resolve the allegations made against the Respondent prior to the Respondent re-enrolling in the University. A disciplinary hold may remain in place or be implemented after the student withdraws in order to enforce this Section .03(3).
- (4) Time Extensions and Rescheduling. Any time period described in the Code may be extended for good cause at the discretion of the Director of OSC. Any meeting or hearing described in the Code may be rescheduled for good cause at the discretion of the Director of OSC.
- (5) Voluntary Impairment. A student's voluntary impairment to themselves resulting from the use and/or consumption of alcohol, drugs, chemicals, and/or other substances does not excuse or diminish a violation of the Code, except as provided in Section .11 (Policy on Amnesty for Good Samaritans and Students in Need of Emergency Medical Attention).
- (6) Other Rights – Sexual Misconduct, Relationship Violence, or Stalking. In addition to rights granted in the Code, in cases involving an allegation of sexual misconduct, relationship violence, or stalking, the Complainant and the Respondent shall have the rights outlined in the University's policies and procedures for investigating and resolving complaints of sexual misconduct, relationship violence, or stalking 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.

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

1720-04-03-.04 Standards of Conduct. Students are prohibited from engaging in the following types of misconduct:

- (1) Academic Dishonesty. Cheating, plagiarism, or any other act of academic dishonesty, including, but not limited to, an act in violation of the Honor Statement.
- (2) False Information. Providing false information to a University official.
- (3) Misuse of Information in Connection with University Investigation or Hearing. Falsifying, distorting, misrepresenting, or withholding information in connection with a University investigation or hearing, except as provided in Section .05(1)(i).
- (4) Misconduct Relating to Records or Identification. Forging, altering, destroying, falsifying, or misusing records or identification, whether in print or electronic form.
- (5) Harm to Others. Causing physical harm to any person; endangering the health or safety of any person (including oneself); engaging in conduct that causes a reasonable person to fear harm to his/her health or safety; or making an oral or written statement that an objectively reasonable person hearing or reading the statement would interpret as a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals.
- (6) Harassment. Unwelcome conduct that is so severe or pervasive, and objectively offensive, that it substantially interferes with the ability of a person to work, learn, live, or participate in or benefit from the services, activities, or privileges provided by the University. In no event shall this rule be construed to discipline a student for speech

protected by the First Amendment to the United States Constitution (e.g., mere insulting or offensive speech).

- (7) Sexual Misconduct, Relationship Violence, and/or Stalking. Sexual misconduct, relationship violence, and/or stalking.
- (8) Invasion of Privacy. 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 nonconsensual recordings by any means is also prohibited.
- (9) Private or Public Property. Any of the following conduct with respect to private or public property, including, but not limited to, University-controlled property: theft; misappropriation; unauthorized possession, use, sale, duplication, or entry; vandalism; destruction; damage; or conduct that is reasonably likely to cause damage.
- (10) Hazing. Any intentional or reckless act, on or off University-controlled property, by one (1) student, acting alone or with others, which is directed against any other student, which endangers the mental or physical health 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.
- (11) Disorderly Conduct. Fighting or other physically violent or physically threatening conduct; creating a hazardous or physically offensive condition by any act that serves no legitimate purpose; making noise that could unreasonably disturb others who are carrying on lawful activities; or conduct that breaches the peace.
- (12) Lewd, Indecent, or Obscene Conduct. Engaging in lewd, indecent, or obscene conduct, including, without limitation, public exposure of one's sexual organs, public urinating, and public sexual acts.
- (13) Imminent Lawless Action. Engaging in speech either orally or in writing that is directed to inciting or producing imminent lawless action and is likely to incite or produce such action.
- (14) Fire Safety. Any act of arson; falsely reporting a fire, the presence of an explosive or incendiary device, or other emergency; setting off a false fire alarm; or tampering with, removing, or damaging fire alarms, fire extinguishers or any other safety or emergency equipment from its proper location except when removed in a situation in which there is a reasonable belief of the need for such equipment.
- (15) University Keys, Access Cards, and Identification. Possessing, using, or duplicating University keys, University access cards, or University identification cards without authorization from the University.
- (16) Information Technology. Theft, misuse, or unauthorized use of information technology facilities, resources, or access codes, including, 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) Weapons. Possessing, using, storing, or manufacturing any weapon on University-controlled property or in connection with a University-affiliated activity, unless authorized in writing by the Chief of Police or his/her designee.
- (18) Alcohol-Related Conduct – University Property or University Activities. Consuming, manufacturing, possessing, distributing, dispensing, selling, or being under the influence of alcoholic beverages on University-controlled property or in connection with a University-affiliated activity.
- (19) Alcohol-Related Conduct Prohibited by Law. Consuming, manufacturing, possessing, distributing, dispensing, selling, or being under the influence of alcoholic beverages, if prohibited by federal, state, or local law.
- (20) Providing Alcohol to Underage Person. Providing an alcoholic beverage to a person younger than twenty-one (21) years of age, unless permitted by law.
- (21) Drugs and Drug Paraphernalia. Using, manufacturing, possessing, distributing, selling, dispensing, or being under the influence of drugs, if prohibited by federal, state, or local law; using, manufacturing, possessing, distributing, or selling drug paraphernalia, if prohibited by federal, state, or local law; using or possessing a prescription drug if the prescription was not issued to the student; or distributing or selling a prescription drug to a person to whom the prescription was not originally issued.
- (22) Failure to Fulfill a University Financial Obligation. Failing to timely fulfill a University bill, account, or other financial obligation owed to the University.
- (23) Failure to Respond, Comply, or Identify. Failing to respond to a request to report to a University administrative office; failing to comply with a lawful directive of a University employee or other public official acting within the scope of his/her duties; or failing to identify oneself to a University employee or other public official acting within the scope of his/her duties when requested to do so.
- (24) Failure to Appear. Failing to appear at a University hearing, including, but not limited to, a hearing of a University conduct board, following a request to appear either as a party or as a witness.
- (25) Violation of Interim Suspension, No-Contact Directive, or Sanction. Violating the terms of an interim suspension, a no-contact directive, or a disciplinary sanction imposed by the University.
- (26) Obstruction or Disruption of University Activity. Obstructing or disrupting teaching, learning, studying, research, public service, administration, disciplinary proceedings, emergency services, or any other University-affiliated activity, or the free flow of pedestrian or vehicular traffic on University-controlled property. In no event shall this rule

be construed to discipline a student for speech protected by the First Amendment to the United States Constitution.

- (27) Violation of University Policy or Rule. Violating a University policy or rule, including, 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) Act Prohibited by Law. Committing an act that is prohibited by local, state, or federal law.
- (29) Attempted Violation; Accessory to Violation. Attempting to commit a violation of a Standard of Conduct or being an accessory to the commission of an act or attempted act in violation of a Standard of Conduct.
- (30) Retaliation. Engaging in retaliation.

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

1720-04-03-.05 Fundamental Rights.

- (1) Rights of the Respondent. The following summarizes the rights granted to a Respondent in the student conduct process:
  - (a) Right to be assisted by an Advisor during any and all stages of the student conduct process, in accordance with Section .05(3);
  - (b) Right to an opportunity for an Educational Conference, in accordance with Section .06(5);
  - (c) Right to resolve allegations of misconduct and/or sanctions through a Formal Hearing, in accordance with Section .07(2);
  - (d) Right to receive notice of meetings and hearings at which the Respondent may be present and receive access to records used during those meetings and hearings, as provided herein;
  - (e) Right to the presumption of innocence (i.e., the Conduct Officer bears the burden of presenting information demonstrating that it is more likely than not that the Respondent violated the Standards of Conduct, as alleged in the Notice of Allegations);
  - (f) Right to not be directly questioned by anyone other than the Chairperson in a hearing before a Student Life Hearing Officer or the Student Conduct Board ("SCB");
  - (g) Right to challenge the fairness and/or impartiality of a Student Life Hearing Officer, a member of the SCB, or a member of the Appellate Board;

- (h) Right to have a SCB Hearing conducted in accordance with Section .08, including, without limitation, the right to present information to the SCB, the right to propose questions for the Chairperson to ask witnesses, the right to request that information be excluded from the SCB's consideration, and the right to make a closing statement;
- (i) Right to refrain from presenting information and witnesses during a hearing before the Student Life Hearing Officer or the SCB, and the right to not have the Student Life Hearing Officer or SCB draw an inference adverse to the Respondent if the Respondent chooses not to present information or witnesses;
- (j) Right to Notice of Decision of the SCB, in accordance with Section .08(5);
- (k) Right to appeal the decisions of the SCB that are contained in the Notice of Decision, in accordance with Section .08(6);
- (l) Right to receive a copy of a notice of an initial, interim, or final decision, or a change in such a decision, issued by the Vice Chancellor for Student Life, OSC, a Student Life Hearing Officer, the SCB, and/or the Appellate Board (e.g., Notice of Allegations, Notice of Decision, Notice of Final Decision), simultaneously with the Complainant's receipt of a copy of the notice of the decision; and
- (m) Right to appeal a decision issued by OSC, a Student Life Hearing Officer, the SCB, and/or the Appellate Board, and receive a notice containing information about the right to appeal simultaneously with the Complainant's receipt of a notice of such information.

(2) Rights of the Complainant.

- (a) A Complainant shall be granted equivalent rights to the rights granted to a Respondent under the Code including, without limitation:
  - 1. Right to meet with OSC to ask questions and receive information about the student conduct process, including, without limitation, the status of an investigation;
  - 2. Right to receive notice of meetings and hearings at which the Complainant may be present and receive access to records used during those meetings and hearings, as provided herein;
  - 3. Right to be assisted by an Advisor during any and all stages of the student conduct process, in accordance with Section .05(3);
  - 4. Right to present information and witnesses during meetings and hearings, including, without limitation, investigations, or hearings before a Student Life Hearing Officer, and SCB Hearings;
  - 5. Right to not be directly questioned by anyone other than the Chairperson in a hearing before a Student Life Hearing Officer or the SCB;
  - 6. Right to challenge the fairness and/or impartiality of a Student Life Hearing Officer, a member of the SCB, or a member of the Appellate Board;

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

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

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

- (1) Receipt and Review of Allegations of Misconduct. OSC may initiate the student conduct process on the basis of written allegations received from any source, including, without limitation, a student, a faculty member, a University housing employee, or a law enforcement agency. OSC also may initiate the student conduct process in the absence of written allegations if OSC becomes aware, through other means, of potential misconduct committed by a student. Upon receipt of written allegations or other information concerning potential student misconduct, OSC will review the information and determine whether to initiate the student conduct process. OSC's determination of whether to initiate the student conduct process generally will be based on: the preliminary investigation by OSC or other University official(s), if any, into the allegations received by OSC; OSC's determination of whether the alleged conduct falls within the jurisdiction of the Code; and OSC's determination of whether the alleged conduct, if true, violated the Standards of Conduct.
- (2) Investigation of Allegations of Misconduct. OSC may investigate the allegations against the Respondent by interviewing witnesses and obtaining other information. OSC is not obligated to interview a witness identified by the Respondent or the Complainant if OSC believes the witness is not likely to possess relevant information or is not likely to lead OSC to the discovery of relevant information. OSC may re-interview the Complainant, the Respondent, and/or any other person at any time during the investigation in order to obtain additional and/or clarifying information. Investigations conducted by OSC will be prompt, thorough, and equitable. In conducting an investigation, OSC acts as a fair and impartial party rather than a representative of the person, office, unit, organization, or entity that submitted the allegations to OSC. Parts of OSC's investigation may occur before, during, and/or after the Educational Conference (Section .06(5)) and/or any other part of the student conduct process. At the conclusion of its investigation, OSC may prepare a written report of the findings of the investigation. The report may include an assessment of the credibility of persons interviewed during the investigation and an assessment of whether it is more likely than not that the Respondent violated the Standards of Conduct.
- (3) Fairness and Impartiality. A University employee shall not act on behalf of OSC in the student conduct process in any case in which: (1) the employee is a Complainant or a witness; (2) the employee has a personal interest, prejudice, or bias; or (3) the employee determines, for any other reason, that he/she cannot be fair or impartial.
- (4) Interim Student Conduct Measures.
  - (a) No-Contact Directive. In cases involving allegations of assault, injury, sexual misconduct, relationship violence, stalking, or in other cases where there is reason to believe continued contact between a student and specific persons may interfere with those persons' security, safety or ability to participate effectively in work or studies, OSC may issue a written instruction to a student, called a no-contact directive, that prohibits a student from having verbal, physical, written, and/or electronic contact with specific other persons for a definite or indefinite period of time. A no-contact directive also may prohibit a student from being present on designated University-controlled property. Any student, faculty or staff member or other person with a reasonable justification may request that a no-contact directive be issued to a student.
  - (b) Disciplinary Hold. The Respondent's academic record (including the release of the Respondent's official or unofficial transcript), degree, ability to register for classes, and/or ability to re-enroll may be placed on disciplinary hold by OSC or

by another appropriate University office at the request of OSC for the following reasons: (1) to require the Respondent to participate in the student conduct process (OSC will release the hold after the Respondent attends the Educational Conference but may reinstate the hold in order to require the Respondent to participate in other parts of the student conduct process); or (2) to require the Respondent to satisfy the terms and conditions of disciplinary sanctions received (the hold shall be released after the terms and conditions have been satisfied). No diploma shall be given and no grades, academic credit, or degree shall be awarded to a student who has been placed on disciplinary hold.

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

(d) Interim Suspension. When the Vice Chancellor for Student Life has reasonable cause to believe that a Respondent's continued presence on University-controlled property or at University-affiliated activities poses a significant risk of substantial harm to the health, safety, or welfare of others or to property or poses an ongoing threat to the disruption of, or interference with, the normal operations of the University, the Vice Chancellor for Student Life may impose an interim suspension prior to the conclusion of a full hearing on the alleged misconduct. An interim suspension shall be confirmed by notice to the Respondent that explains the basis for the interim suspension and shall remain in effect until the conclusion of the student conduct process, which should be completed without undue delay. Within three (3) days of the imposition of the suspension, the Respondent shall be offered an opportunity to appear personally before the Vice Chancellor for Student Life in order to discuss the following issues only: (i) the reliability of the information concerning the Respondent's conduct; and (ii) whether the conduct and surrounding circumstances reasonably indicate that the Respondent's continued presence on University-controlled property or at University-affiliated activities poses a significant risk of substantial harm to the health or safety of others or to property or poses an imminent threat of disruption of or interference with the normal operations of the University. During an interim suspension, the Respondent may, at the discretion of the Vice Chancellor for Student Life, be denied access to University-controlled property, including, without limitation, residence halls, and all other University-affiliated activities (including, without limitation, academic work) or privileges for which the Respondent might otherwise be eligible. A Respondent that 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 Life. When a student is placed on interim suspension, the Respondent may be assigned a grade of "W" or "I," whichever is deemed appropriate by the faculty member involved.

(5) Educational Conference.

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

1. OSC orally informs the Respondent about the allegations made against the Respondent and, if requested by the Respondent, provides the Respondent with a reasonable opportunity to review the written allegations, if any, received by OSC.
2. OSC provides the Respondent with an opportunity to respond to the allegations, including, without limitation, an opportunity to present information to OSC concerning the allegations and identify witnesses whom the Respondent believes OSC should interview to obtain additional information.
3. Both OSC and the Respondent may ask questions to each other and seek clarifying information about the allegations, the possible sanction(s), and the student conduct process.
4. Based on information provided by the Respondent during the Educational Conference, OSC may issue a no-action determination (Section .07(4)(a)) or continue its investigation in order to determine whether it is more likely than not that the Respondent violated the Standards of Conduct.

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

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

(6) Notice of Allegations. A Notice of Allegations is a written notice that informs the

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

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

1720-04-03-.07 Student Conduct Process: Resolutions.

(1) Resolution by Agreement.

- (a) Purpose and Effects of a Resolution Agreement. At any time during the student conduct process, a Respondent may resolve allegations of misconduct by signing a Resolution Agreement. By signing a Resolution Agreement, the Respondent: (1) accepts responsibility for violating the Standards of Conduct, as alleged by OSC; (2) agrees to the imposition of the sanction(s) proposed by OSC; and (3) waives any and all rights the Respondent may have to resolve the allegations against him/her through a Formal Hearing. A Resolution Agreement is not valid until it is signed by both the Respondent and an OSC employee.
- (b) Revocation or Appeal of a Resolution Agreement. The Respondent may not revoke or appeal a Resolution Agreement signed by the Respondent.
- (c) Resolution Agreement - Sexual Misconduct. After OSC receives a Resolution Agreement signed by the Respondent in a case involving sexual misconduct, OSC will notify the Complainant about the proposed Resolution Agreement in writing and provide the Complainant with the opportunity to object to the sanction proposed by OSC in the Resolution Agreement. A Complainant must notify OSC of his/her objection in writing within three (3) business days from the date that OSC informs the Complainant about the proposed Resolution Agreement. If the Complainant timely informs OSC of his/her objection, then OSC may address the Complainant's objection by modifying the sanction in a way that is agreeable to both the Respondent and the Complainant and having the Respondent sign the modified Resolution Agreement. Otherwise, OSC will continue the student conduct process and resolve the allegations against the Respondent in accordance with the Code. Nothing in this Section .07(1) shall be construed to permit OSC to conduct an alternative resolution process (e.g., mediation) in a case involving allegations of sexual misconduct.
- (d) Resolution Agreement – Academic Dishonesty. In order to resolve an allegation that the Respondent violated Section .04(1) (academic dishonesty) through a Resolution Agreement, the Respondent shall agree to the imposition of the instructor's academic penalty in addition to agreeing to the other requirements contained in Section .07(1)(a).

(2) Resolution by Formal Hearing.

- (a) Types of Formal Hearings. A Formal Hearing is a process through which a Respondent has a right to contest allegations of misconduct and/or the sanctions proposed by OSC by presenting information (including, without limitation, witnesses) to a decision maker other than the University employee(s) who conducted the investigation and/or Educational Conference. The Code provides for three types of Formal Hearings, depending on the gravity of the disciplinary sanctions that have been proposed by OSC:
1. A hearing before a Student Life Hearing Officer, which is described in Section .07(2)(e);
  2. A hearing before the SCB ("SCB Hearing"), which is described in Section .08; and

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

and the Respondent fails to elect a Formal Hearing within the additional time granted by OSC, then the Respondent waives all rights to a Formal Hearing, and OSC has the discretion to deem the Respondent to have accepted OSC's determination of responsibility for misconduct and may impose sanction(s) deemed appropriate by OSC.

(3) Resolution through an Alternative Resolution Process.

(a) Proposal of an Alternative Resolution Process. At any time during the student conduct process, OSC may propose to the Respondent and the Complainant that they attempt to resolve the allegations against the Respondent through an alternative resolution process. Before proposing that the allegations be resolved through an alternative resolution process, OSC shall determine whether an alternative resolution process would be an appropriate method of resolution based on the facts and circumstances of the case, and, if so, what type of alternative resolution process should be used. Examples of alternative resolution processes that may be proposed by OSC include mediation, facilitated dialogue, conflict coaching, and restorative justice. An alternative resolution process is a voluntary process that may or may not result in an Alternative Resolution Agreement. If an Alternative Resolution Agreement is not reached, then the student conduct process will proceed, and the allegations against the Respondent will be resolved through one of the other resolution methods in the Code.

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

(c) Alternative Resolution Agreement. An Alternative Resolution Agreement is a written agreement that confirms an agreement reached during an alternative resolution process to resolve the allegations against the Respondent. To be valid, an Alternative Resolution Agreement shall be signed by OSC, the Respondent, and the Complainant and shall include a waiver of the Respondent's right, if any, to have a Formal Hearing on the allegations. Neither the Respondent nor the Complainant may revoke or appeal an Alternative Resolution Agreement.

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

(a) No Action Determination. The student conduct process concludes when OSC makes a final determination at any point in the process that no action will be taken (e.g., OSC determines that it is not more likely than not that the Respondent violated the Standards of Conduct, a Complainant declines to participate in the student conduct process, and OSC does not have sufficient

information or witnesses to move forward with the student conduct process). OSC may reinstate the student conduct process upon receipt of new information; however, after OSC has determined to take no action, OSC may reinstate the student conduct process after a student has graduated only in cases involving Section .04(1) (academic dishonesty). A Complainant who is informed by OSC of a no action determination may appeal the decision to the Director of Student Conduct, in writing, within five (5) business days of the date that OSC transmitted notice of the no action determination to the Complainant. The decision of the Director of OSC is final and may not be appealed.

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

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

1720-04-03-.08 Student Conduct Board: Hearings and Appeals.

(1) Notice of SCB Hearing.

- (a) When a Notice of SCB Hearing is Sent. If the Respondent requests a SCB Hearing in accordance with Section .07(2), then OSC will send the Respondent and the Complainant a Notice of SCB Hearing at least seven (7) business days in advance of the date of the hearing.
- (b) Information in the Notice of SCB Hearing. The Notice of SCB Hearing generally will contain, or be accompanied by, the following information: (1) the date, time, and place of the SCB Hearing (the Director of OSC may reschedule the SCB Hearing for good cause and issue a revised Notice of SCB Hearing that contains a new date, time, and place of the SCB Hearing); (2) a copy of the Notice of Allegations; (3) the sanction(s) that the Conduct Officer will request the SCB impose on the Respondent; (4) the names of all witnesses through whom the Conduct Officer is likely to present information during the SCB Hearing; (5) a notice of the right to the assistance and/or support of an Advisor during the SCB Hearing; and (6) a description of all tangible or electronic information that the Conduct Officer is likely to present to the SCB, such as an investigative report, police report, incident report, witness statements, video or audio recordings, photographs, text messages, or phone records.
- (c) More than One Respondent. In cases involving more than one (1) Respondent, SCB Hearings concerning each Respondent's conduct may be conducted separately upon written request of a Respondent submitted at the time of the Respondent's request for a Formal Hearing. The Director of OSC has the discretion to make the final determination of whether to grant such a request and will notify the Respondents of his/her decision.
- (d) Consequences of Failing to Attend a SCB Hearing. If the Respondent fails to attend a SCB Hearing, then the Respondent waives any and all rights to a SCB Hearing. The SCB may: proceed with the SCB Hearing without the Respondent's participation; hold the Respondent accountable for all decisions made in the Respondent's absence, including, without limitation, decisions concerning responsibility for alleged violations of the Standards of Conduct; and may determine that the Respondent's failure to attend the hearing constitutes a separate violation of the Standards of Conduct. If the SCB determines, in the Respondent's absence, that it is more likely than not that the Respondent violated the Standards of Conduct, then OSC may implement the sanctions imposed by the SCB and conclude the student conduct process.

(2) Composition of the Student Conduct Board.

- (a) Eligible Pool. The Vice Chancellor for Student Life shall annually appoint a pool of persons who are eligible to serve on a SCB. The Vice Chancellor for Student Life may appoint University students, University faculty members, or University staff employees; however, an employee who works in OSC is ineligible to serve

on a SCB. Persons appointed by the Vice Chancellor will be trained by OSC to serve on a SCB.

(b) Appointment of the SCB. The SCB is appointed ad hoc for each hearing by the Director of OSC from the pool described in Section .08(2)(a). The Director of OSC shall appoint a SCB consisting of one (1) non-voting Chairperson and seven (7) voting members. The Chairperson shall be a University faculty member or staff employee who has received training from OSC on how to conduct a SCB Hearing. Five (5) voting members and one (1) non-voting Chairperson constitute a quorum of the SCB that was appointed by the Director of OSC; however, OSC will make reasonable efforts to seat a SCB consisting of seven (7) voting members. In seating any SCB, the student composition of the voting members of the SCB must be equal to or greater than the sum of the faculty and staff voting members. Regardless of the number of voting members present, all classifications of the University community (students, faculty, and staff) must be represented by at least one (1) voting member.

(c) Fairness and Impartiality of SCB Members. Any member of the SCB who determines that he/she cannot decide a case fairly and impartially for any reason shall excuse himself/herself from serving on the SCB, in which case the Director of OSC shall appoint a substitute member of the panel in accordance with the rules in Section .08(2)(b).

(3) General Rules Governing SCB Hearings.

(a) Required Pre-Hearing Information and Copies – Complainant and Respondent.

1. At least five (5) business days prior to the SCB Hearing, the Complainant and the Respondent must provide the following to the Director of OSC in writing:

(i) The name of their Advisor, if any, who will attend the SCB Hearing;

(ii) The names of all witnesses through whom they plan to present information to the SCB and a brief summary of the information that they reasonably anticipate that each witness will provide to the SCB;

(iii) A copy of all tangible or electronic information that they plan to present to the SCB (e.g., witness statements, video or audio recordings, photographs, text messages, phone records, medical bills, diagrams). However, they are not required to provide copies of information that is not in a form that allows copying (e.g., weapon, piece of clothing), in which case they should describe the information in writing; and

(iv) A copy of a statement, if any, that they want the SCB to consider in determining the appropriate sanction to impose on the Respondent if the SCB finds that the Respondent violated a Standard of Conduct. The Complainant's statement may include a description of the impact of the Respondent's alleged conduct

on the Complainant. The Respondent's statement may include a description of any factors the Respondent believes mitigates the alleged misconduct.

2. During the SCB Hearing, the Complainant and the Respondent may present witnesses who were not identified in the Notice of Formal Hearing only if they comply with this Section .08(3)(a). The Complainant and the Respondent are responsible for contacting witnesses who were not identified in the Notice of Formal Hearing, informing them about the date, time, and place of the SCB Hearing, and securing their attendance at the SCB Hearing.
- (b) Pre-Hearing Review of Information. Individuals involved with the hearing are responsible for contacting OSC to arrange a time to review the information prior to the hearing if such review is desired and the information has not been made available electronically. No less than three (3) business days prior to the hearing, OSC will make copies of information submitted by the Complainant, the Respondent, and the Conduct Officer available for review by the Complainant, Respondent, their respective Advisors, and members of the SCB. Those individuals will be notified by OSC when materials are available for review. OSC may make the information available electronically. In their sole discretion, OSC may redact irrelevant information prior to making information available.
  - (c) Recording of the SCB Hearing. The University shall be responsible for making a verbatim record (e.g., digital recording) of a SCB Hearing. Deliberations of the SCB shall not be recorded. The record of the SCB Hearing shall be the property of the University. The Complainant and the Respondent may take notes during a SCB Hearing, which shall be their own property, but neither the Complainant nor the Respondent may record the hearing using any other method of recording. However, the Complainant and the Respondent may request a copy of the digital recording.
  - (d) Attendance and Participation. Attendance during a SCB generally is limited to members of the SCB, the Conduct Officer, the Complainant and the Complainant's Advisor, the Respondent and the Respondent's Advisor, and witnesses. The Conduct Officer, the Complainant, the Respondent, Advisors, and witnesses may not be present during the deliberations of the SCB. Witnesses may attend the SCB Hearing only while they are presenting information to the SCB, unless the witness is the Complainant, the Respondent, or an Advisor. The Chairperson and the Director of OSC have the discretion to allow other persons to attend the SCB Hearing, in accordance with state and federal law. The Complainant and the Complainant's Advisor may attend any part of the SCB Hearing (excluding the deliberations of the SCB), but the Complainant and the Complainant's Advisor shall be excused from the hearing room when the Respondent's Education Records or information obtained from the Respondent's Education Records is disclosed unless the information is also part of the Complainant's Education Records. However, the previous sentence shall not apply, and the Complainant and the Complainant's Advisor shall have the right to attend the entire SCB Hearing, in cases of sexual misconduct, relationship violence, and stalking. The Chairperson may accommodate concerns for the personal safety, well-being, and/or fears of confrontations of the Complainant, the Respondent, and/or witnesses by permitting attendance or participation by closed circuit television, video conferencing, or other appropriate means, as

determined in the discretion of the Chairperson. However, the identity of all persons who present information to the SCB must be made known to the Respondent and the Complainant. The Respondent and the Complainant must be allowed to view and hear a person who is attending or participating by closed circuit television, video conferencing, or other similar means.

(4) Procedural Rules for SCB Hearings.

- (a) Right to Challenge the Selection of a SCB Member. At the beginning of the SCB Hearing, the Chairperson shall allow the Complainant and the Respondent to request the removal of a member of the SCB on the grounds that the person cannot be fair and impartial in deciding the case. If the Chairperson determines that the person cannot be fair and impartial, then the Director of OSC may appoint a substitute member of the SCB in accordance with Section .08(2)(b) or, if a quorum of the SCB still exists, remove the SCB member and allow the SCB Hearing to continue without appointing a substitute member.
- (b) Authority of the Chairperson. The Chairperson has the authority to maintain order and make all decisions necessary for the fair, orderly, and expeditious conduct of the SCB Hearing. The Chairperson shall be the final decision maker concerning what, how, and in what order information and witnesses are presented to the SCB.
- (c) Exclusion of Information. Upon the Chairperson's initiation or upon request by the Conduct Officer, the Complainant, the Respondent, or a member of the SCB, the Chairperson may exclude the following information from the SCB's consideration: (1) irrelevant information; (2) information that unreasonably repeats information already provided to the SCB; (3) information that was not provided in advance of the hearing in accordance with Section .08(3)(a); (4) information that is protected from disclosure under federal or Tennessee law; and/or (5) information about a person's character or character trait, if the information is being presented to show that on a particular occasion the person acted in accordance with the character or character trait. Generally, in cases involving an allegation of sexual misconduct, neither the Complainant's nor the Respondent's prior sexual history is relevant to the issue of whether sexual misconduct occurred and will not be considered by the SCB. However, when the Respondent contends that the Complainant gave consent for a particular sexual act, the prior sexual history between the Complainant and the Respondent may be relevant to assess the manner and nature of communications between the parties, although the mere existence of a current or previous dating, romantic, intimate, or sexual relationship with the other person does not allow a Respondent to imply or infer consent. The Complainant's and the Respondent's prior sexual history may also be relevant in other limited circumstances, such as to show intent, motive, absence of mistake, or to explain an injury or physical finding.
- (d) Persons Who May Present Information. The only persons who may present information and/or witnesses during a SCB Hearing are the Conduct Officer, the Complainant, and the Respondent. The Complainant and the Respondent are responsible for presenting their own information and/or witnesses, if any, to the SCB (an Advisor shall not present information and/or witnesses to the SCB).
- (e) Formal Rules. Formal rules of process, procedure, and/or technical rules of evidence, such as those applied in criminal or civil court, are not used in SCB

Hearings. The Chairperson shall decide all procedural questions that arise during a SCB Hearing. The Chairperson may consult with the Director of OSC for assistance in resolving procedural questions fairly and in accordance with the Code.

(f) Questioning of Witnesses. Witnesses will provide information to the SCB and answer questions from the Chairperson. The Chairperson may ask questions and/or submit a request for additional information to the Respondent, the Complainant, the Conduct Officer, and/or witnesses. The Conduct Officer, the Respondent and/or the Complainant shall not directly ask questions to each other or other witnesses. The Conduct Officer, the Respondent, the Complainant, and/or members of the SCB may propose questions for the Chairperson to ask witnesses by submitting the proposed questions to the Chairperson in writing during the hearing. The Chairperson has the discretion whether to ask a witness a question proposed by the Conduct Officer, the Respondent, the Complainant, and/or members of the SCB. The method of questioning witnesses outlined in this Section .08(4)(f) is used to preserve the educational tone of the SCB Hearing and to avoid the creation of an adversarial environment.

(g) Closing Statements. At the close of the SCB Hearing, the Chairperson may allow the Conduct Officer, the Complainant, and the Respondent equal opportunities to make statements to the SCB summarizing the information presented to the SCB and/or advocating the decision that the SCB should reach. The Conduct Officer and the Complainant may advocate that the SCB impose a specific sanction(s), and the Respondent may respond; however, the Respondent's record of student conduct maintained by OSC shall not be disclosed to the SCB by the Conduct Officer or the Complainant during the hearing except in accordance with Section .08(5)(c).

(h) Burden of Presenting Information Demonstrating Misconduct. The Conduct Officer bears the burden of presenting information demonstrating that it is more likely than not that the Respondent violated the Standards of Conduct, as alleged in the Notice of Allegations. Neither the Complainant nor the Respondent is required to present information or witnesses concerning the Respondent's alleged misconduct. The SCB shall not draw an inference adverse to the Conduct Officer, the Complainant, or the Respondent if the Complainant or the Respondent chooses not to present information or witnesses to the SCB.

(5) Notice of Decision of the Student Conduct Board.

(a) Deliberation of the SCB. After the Chairperson determines that all relevant information has been received by the SCB, the SCB will deliberate in private and decide, for each Standard of Conduct alleged in the Notice of Allegations to have been violated, whether it is more likely than not that the Respondent violated the Standard of Conduct. The SCB will decide by majority vote whether the Respondent violated the Standards of Conduct. The Chairperson shall not vote on the decision of whether the Respondent is responsible for violating the Standards of Conduct or what sanctions should be imposed unless there is a tie vote of the SCB.

(b) Basis of Decision. The SCB shall not base its decision on information not presented during the SCB Hearing. However, if the SCB requests that additional information be provided after the SCB Hearing, the SCB may consider and base

its decision on the additional information, as long as the Conduct Officer, the Respondent, and the Complainant have had a chance to review and respond to the additional information either in a resumption of the SCB Hearing or in writing.

(c) Determination of Sanction(s). If the SCB decides that the Respondent violated the Standards of Conduct, then the SCB will decide the appropriate sanction(s) by majority vote. In deciding the appropriate sanctions for a Respondent's misconduct, the SCB may consider: (1) statements submitted by the Complainant and/or the Respondent to the SCB concerning the appropriate sanctions; and (2) a statement about the Respondent's conduct history, which shall be provided to the Chairperson by the Director of OSC in a sealed envelope prior to the SCB Hearing. The statements should be provided to the Chairperson by the Director of OSC in a sealed envelope prior to the SCB Hearing.

(d) Issuance of Notice of Decision. Within two (2) business days of the conclusion of the SCB Hearing, the Chairperson shall issue a Notice of Decision and transmit a copy of the Notice of Decision to the Director of OSC. The Director of OSC shall notify the Respondent about the Notice of Decision and provide a copy of the Notice of Decision. If permitted or required under law, the Director of OSC shall notify the Complainant about the Notice of Decision to the Complainant (simultaneously with the notification to the Respondent) and provide a copy of the Notice of Decision to the Complainant.

(e) Information in Notice of Decision. The following information shall be included in the Notice of Decision: (1) for each Standard of Conduct identified in the Notice of Allegations, the SCB's decision concerning whether it is more likely than not that the Respondent violated the Standard of Conduct and the SCB's rationale for the decision concerning the alleged violation of the Standard of Conduct, including, without limitation, a brief summary of the information upon which the SCB relied in making its decision; (2) the sanction(s), if any, that the SCB has imposed on the Respondent; and (3) information about the Respondent's and the Complainant's options, if any, to appeal the decision of the SCB.

(6) Appealing Decisions of the Student Conduct Board.

(a) Appealable Decisions. The Conduct Officer, the Complainant and/or the Respondent may appeal the decisions of the SCB that are contained in the Notice of Decision, but the grounds for appeal are limited to those described in Section .08(6)(c).

(b) Notice of Appeal. An appeal is procedurally valid only if all of the following requirements are met: (1) an appeal shall be submitted in writing by fully completing a form approved by OSC called a "Notice of Appeal;" (2) the Notice of Appeal shall be received by OSC within five (5) business days of the date that the Director of OSC transmitted the Notice of Decision; and (3) the Notice of Appeal shall not include information that is not included in the record of the SCB Hearing, except the Notice of Appeal may contain a summary of the new information described in Section .08(6)(c)(3).

(c) Grounds for Appeal. The Notice of Appeal shall explain the grounds for the appeal, which shall be limited to one (1) or more of the following grounds:

1. Clearly Unreasonable Sanction. The sanction(s) imposed by the SCB is clearly unreasonable (i.e., has no sound basis or justification in reason).
  2. Material Procedural Error. A procedural error occurred prior to or during the SCB Hearing, and the procedural error reasonably could have had a material impact on the SCB in reaching its decision. Neither the failure of the Respondent or the Complainant to secure the attendance of an Advisor or witness nor the failure of an Advisor or witness to attend or otherwise participate in any phase of the student conduct process constitutes a material procedural error. The failure of the Respondent or the Complainant to attend the SCB Hearing does not constitute a material procedural error.
  3. New Information. New information has been discovered, the information reasonably could have had a substantial impact on the SCB in reaching its decision, and the person submitting the Notice of Appeal did not know and reasonably could not have known about the information at the time of the SCB Hearing.
- (d) Effective Date of Sanction. The sanction(s) imposed by the SCB shall not be effective during the period in which a Notice of Appeal may be submitted, or, if a procedurally valid Notice of Appeal has been submitted (as determined by Section .08(6)(b)), until a Notice of Final Decision is issued by the Appellate Board, whichever is later. In cases in which the sanction of degree revocation is imposed, the sanction shall be presented to the University's Board of Trustees for approval before the sanction is imposed.
- (e) Appellate Board. The Appellate Board is the University body that considers appeals of decisions of the SCB, after a procedurally valid Notice of Appeal has been submitted to OSC. The Vice Chancellor for Student Life will appoint a pool of persons trained by OSC who are eligible to serve on an Appellate Board. The Vice Chancellor for Student Life may appoint University students, University faculty members, or University staff employees to be members of that pool.
- (f) Determination of Procedural Validity of Notice of Appeal. Within seven (7) business days after the receipt of a Notice of Appeal, the Director of OSC will determine whether the Notice of Appeal is procedurally valid. A Notice of Appeal is procedurally valid only if it has been fully completed, timely submitted to OSC, and does not contain information outside of the record of the SCB Hearing. If a Notice of Appeal is procedurally invalid and the time for submitting a Notice of Appeal under this Section .08(6)(f) has expired, then the Director of OSC shall send the Conduct Officer, the Respondent, and the Complainant (if permitted or required by law) a notice that the decision of the SCB has become final and any sanction(s) imposed will become effective immediately. However, in a case in which the Notice of Appeal contains information outside of the record of the SCB Hearing, the Director of OSC may proceed with appointing an Appellate Board after removing from the Notice of Appeal information that was not included in the record of the SCB Hearing.
- (g) Appointment of Appellate Board. If the Notice of Appeal is procedurally valid, then the Director of OSC shall appoint an Appellate Board to hear the appeal from the pool of persons who are eligible to serve on an Appellate Board. An Appellate Board shall be composed of one (1) non-voting Chairperson and three

(3) voting members. At least one (1) voting member of the Appellate Board shall be a University student. The Director of OSC shall not appoint a person to serve as Chairperson or a voting member of the Appellate Board if the person served as a Chairperson or a voting member of the SCB whose decision is being appealed. In addition, an employee who works in OSC or whose direct supervisor is the Conduct Officer who participated in the SCB Hearing shall be ineligible to serve as a member of the Appellate Board.

- (h) Transmittal of Notice of Appeal. After the appointment of the members of the Appellate Board, OSC shall transmit a copy of the Notice of Appeal to persons who have a need to know about the Notice of Appeal, including, without limitation, the members of the Appellate Board and all non-appealing parties (e.g., if the Respondent appeals, the Conduct Officer and the Complainant would be the non-appealing parties). A non-appealing party may submit a written response to the Notice of Appeal to the Appellate Board within two (2) business days of OSC's transmittal of the Notice of Appeal. The written response shall be limited to: (1) responding to issues raised in the Notice of Appeal and shall not contain information that is not included in the record of the SCB Hearing; and (2) request the removal of a member of the Appellate Board on the grounds that the person cannot be fair and impartial in deciding the case. If the Director of OSC determines that the person cannot be fair and impartial, then the Director of OSC may appoint a substitute member of the SCB in accordance with Section .08(6)(g).
- (i) Recusal. Any member of the Appellate Board who determines that he/she cannot decide the appeal fairly and impartially for any reason shall recuse himself/herself from serving on the Appellate Board, in which case the Director of OSC shall appoint a substitute member of the Appellate Board in accordance with this Section .08(6)(g).
- (j) Review of the Record. The Appellate Board's final decision shall be based on its review of the record of the hearing before the SCB, which shall be limited to: (1) the Notice of Allegations; (2) the Notice of Formal Hearing; (3) the Notice of Decision; (4) the recording and the transcript, if any, of the hearing, and all other information submitted to the SCB during the hearing; and (5) the Notice of Appeal.
- (k) Potential Decisions of the Appellate Board. The Appellate Board shall reach one (1) of the following decisions, by a majority vote:
1. Affirm both the SCB's finding that the Respondent violated the Standards of Conduct and the sanctions imposed by the SCB;
  2. In a case involving a clearly unreasonable sanction, affirm the SCB's finding that the Respondent violated the Standards of Conduct and modify the sanctions imposed by the SCB by imposing a greater or lesser sanction(s);
  3. In cases of a substantial procedural error, remand the case for a new hearing to be conducted by the same SCB. The Appellate Board should recommend to the Chairperson how to correct the procedural error. The Director of OSC may appoint a substitute member for any member of the SCB who is unavailable to participate in the new hearing; or

4. In cases of new information that fits the criteria described in Section .08(6)(c)(3), remand the case to the same SCB for the limited purpose of hearing the new information and reconsidering its decision based on the new information. The Director of OSC may appoint a substitute member for any member of the SCB who is unavailable to participate in hearing the new information or the reconsideration of the decision.

(l) Notice of Final Decision. The Appellate Board shall communicate its decision through a written notice called a Notice of Final Decision. The Notice of Final Decision should be issued within ten (10) business days of the submission of the Notice of Appeal. The Notice of Final Decision shall be sent to the Director of OSC, who will notify the Conduct Officer, the Respondent, the Chairperson of the SCB, and, if permitted or required by law, the Complainant about the Notice of Decision and provide them a copy of the Notice of Decision. The decision of the Appellate Board is final and is not subject to appeal.

(7) Other Issues Heard by the SCB. In addition to hearing disputes concerning violations of the Standards of Conduct, the Student Conduct Board shall also be the University body that hears disputes concerning the interpretation of the Student Government Constitution and disputes concerning the results of Student Government elections.

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

1720-04-03-.09 Sanctions.

(1) General Rules.

(a) Purposes of Sanctions. The primary purposes of sanctions are to: (1) educate the Respondent about appropriate behavior; (2) promote the personal and professional development of the Respondent; (3) discourage the Respondent and other students from violating the Standards of Conduct; and (4) protect other members of the University community. The sanctions imposed on a Respondent should be proportional to the Respondent's misconduct and appropriate for the particular case based on the gravity of the offense (including, without limitation, how the violation affected or reasonably could have affected other members of the University community). Consideration may also be given to the Respondent's conduct record; whether the Respondent acted in self-defense, and, if so, whether the amount of force used was reasonable under the circumstances; the Respondent's academic classification (e.g., undergraduate, graduate, freshman, sophomore, junior, senior); and other aggravating or mitigating factors.

(b) Administrative and Developmental Sanctions. A student who accepts responsibility or is found responsible for violating the Standards of Conduct generally will be given one (1) or more administrative sanctions. A student may also be given one (1) or more developmental sanctions.

(2) Administrative Sanctions.

(a) Warning. A warning is a written notice to a student that informs the student that the student has violated the Standards of Conduct, the misconduct must cease

and/or not reoccur, and further misconduct will likely result in the imposition of more serious sanctions.

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

- (f) Withholding of Degree. The University may withhold a degree as a disciplinary sanction for a specified period of time or until the student's completion of all other sanctions imposed, whichever occurs later.
  - (g) Revocation of Degree. The sanction of the revocation of a degree may be imposed if a student has obtained a degree at least in part through cheating, plagiarism, or other academic dishonesty. Revocation of a degree shall be approved by the University of Tennessee Board of Trustees before the revocation is effective. If approved by the Board of Trustees, this sanction will be noted on the student's academic transcript on a permanent basis.
  - (h) Disciplinary Probation for Student Organizations. A student organization given the sanction of disciplinary probation is permitted to retain University student organization registration on a probationary status. As a condition of the disciplinary probation, the student organization also may be given developmental sanctions.
  - (i) Social Probation. 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 Vice Chancellor for Student Life.
  - (j) Revocation or Suspension of University Registration. In cases of serious or repeated misconduct, a student organization's University registration may be revoked.
- (3) Developmental Sanctions. In addition to an administrative sanction(s), one (1) or more of the following developmental sanctions may be imposed in an effort to foster student learning and development.
- (a) Educational Activities. Educational activities are designed to educate the student about why certain conduct was inappropriate. Examples of such activities include, without limitation, offering a formal apology (in writing and/or in person); attending an educational class, training, or workshop; giving or attending a presentation; preparing and submitting a research project or paper on a designated topic; or offering a written reflection responding to a prompt given by OSC.
  - (b) Restitution. Restitution is compensation for loss, damage, and/or injury incurred as a result of the student's actions. Compensation may take the form of money, service, and/or material replacement. Restitution may be required to be made to the University, a specific individual, or a specific organization. Normally, all restitution must be paid or made within two (2) weeks of the imposition of the sanction.
  - (c) Supervised Work/Service. A student may be assigned unpaid work or service that is both beneficial to the University community and/or likely to assist the student in understanding the effects of the student's misconduct.

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

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

1720-04-03-10 Honor Statement.

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

information is recognized as common knowledge); (4) collaborating on a graded assignment without the instructor's approval; and (5) submitting work, either in whole or partially created by a professional service or used without attribution (e.g., paper, speech, bibliography, or photograph).

(5) Examples of Other Types of Academic Dishonesty. Specific examples of other types of academic dishonesty include, but are not limited to: (1) providing or receiving unauthorized information during an examination or academic assignment, or the possession and/or use of unauthorized materials during an examination or academic assignment; (2) providing or receiving unauthorized assistance in connection with laboratory work, field work, scholarship, or another academic assignment; (3) falsifying, fabricating, or misrepresenting data, laboratory results, research results, citations, or other information in connection with an academic assignment; (4) serving as, or enlisting the assistance of, a substitute for a student in the taking of an examination or the performance of an academic assignment; (5) altering grades, answers, or marks in an effort to change the earned grade or credit; (6) submitting without authorization the same assignment for credit in more than one course; (7) forging the signature of another or allowing forgery by another on any class or University-related document such as a class roll or drop/add sheet; (8) gaining an objectively unfair academic advantage by failing to observe the expressed procedures or instructions relating to an exam or academic assignment; and (9) engaging in an activity that unfairly places another student at a disadvantage, such as taking, hiding, or altering resource material, or manipulating a grading system.

(6) Responsibilities Associated with the Honor Statement. All members of the University community have responsibilities associated with the Honor Statement. These responsibilities are unique to each sector of the University community. Each student is responsible for his/her own personal integrity in academic life. Each student is responsible for knowing and adhering to the terms and conditions of the Honor Statement and may acknowledge his/her adherence to the Honor Statement by writing, "Pledged," and signing on a graded class assignment or examination. Although there is no affirmative duty to report the academic dishonesty of another, each student, given the dictates of his/her own conscience, may choose to report any violation of the Honor Statement to a faculty member or to OSC. The prevention of academic dishonesty, and the response to academic dishonesty, is the immediate responsibility of the instructor. However, students are not excused from complying with the Honor Statement because of an instructor's failure to prevent or discourage academic dishonesty.

(7) Academic Dishonesty – Resolution by the Academic Department.

(a) Notice of Academic Dishonesty and Informal Opportunity to Respond to Allegations. When an act of alleged academic dishonesty is discovered by, or brought to the attention of an instructor, the instructor shall notify the student about the alleged academic dishonesty, describe the information supporting the allegation, and give the student an informal opportunity to respond to the allegation(s) and information. The instructor may proceed with imposing an academic penalty for academic dishonesty if the student has not responded to the instructor's notice to the student concerning the alleged academic dishonesty within five (5) business days of the notice. The instructor does not have the authority under the Code to impose a sanction identified in Section .09(2) or Section .09(3). An academic penalty shall not take effect until after the deadline for an appeal has passed under Section .10(7)(c), or, if the student appeals the penalty, the student conduct process has concluded and the penalty has been

upheld, whichever is later.

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

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

1720-04-03-.11 Policy on Amnesty for Good Samaritans and Students in Need of Emergency Medical Attention.

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

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

Public Acts of Tennessee, 1807, Chapter 64.

1720-04-03-.12 Emergency Powers.

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

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

1720-04-03-.13 Maintenance, Disclosure, and Expungement of Student Disciplinary Records.

- (1) Maintenance of Student Disciplinary Records. The University maintains student disciplinary records separately from student academic records.
- (2) Disclosure of Student Disciplinary Records while a Student is Enrolled. While a student is enrolled in the University, OSC may disclose disciplinary records to University officials who have a legitimate educational interest in the disciplinary records or to students who request to inspect their disciplinary records. OSC may disclose disciplinary records to other persons only in accordance with state or federal law.
- (3) Disclosure of Student Disciplinary Records after a Student is no Longer Enrolled. After a student is no longer enrolled in the University, OSC will disclose a student's disciplinary records to persons outside of OSC only if one of the following sanctions was imposed on the student while the student was enrolled in the University: suspension; expulsion; withholding of degree; or revocation of degree. Notwithstanding the previous sentence, OSC will disclose disciplinary records as required by state or federal law (e.g., subpoena, judicial order).
- (4) Expungement of Student Disciplinary Records. OSC permanently maintains student disciplinary records for students who have received the following sanctions (or their equivalents under previous versions of the Code): suspension; expulsion; withholding of degree; or revocation of degree. OSC expunges student disciplinary records for other students seven (7) years after graduation or the last date of enrollment, except as prohibited by law or a University litigation hold.

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

1720-04-03-.14 Definitions of Terms Used in the Code. The following words, terms, or phrases, when used in the Code, shall have the following meanings:

- (1) Attend: To participate in a meeting or hearing electronically or in person.
- (2) Business Day: Any weekday not designated by the University as a holiday or administrative closure day. When calculating a time period of business days specified in the Code, the business day of the event that triggers a time period is excluded.

- (3) Chairperson: A faculty or exempt staff member appointed by the Director of OSC to preside over and facilitate a SCB Hearing.
- (4) Code, Code of Conduct, or Student Code of Conduct: The University of Tennessee, Knoxville's Student Code of Conduct, Chapter 1720-04-03.
- (5) Coercion: Words and/or conduct that, viewed from the perspective of a reasonable person, substantially impair a person's ability to voluntarily choose whether to engage in a particular sexual act (e.g., sexual contact or sexual intercourse). Coercion is something more than mere seduction or persuasion. Coercion includes, without limitation: physical force; and words and/or conduct that would cause a reasonable person to fear imminent harm to the person's health, safety, or property or that of a third person; threat of the loss or impairment of a job benefit; threat of the loss or impairment of an academic benefit; kidnapping of the person or a third person; or disclosure of sensitive personal information (e.g., disclosure of a person's sexual orientation, gender identity, or gender expression).
- (6) Complainant: An individual who may have been subjected to student conduct that violates the Standards of Conduct, regardless of whether that individual makes a complaint or report to OSC. This term does not imply pre-judgment concerning whether the Respondent violated the Standards of Conduct. The Director of OSC is the final decision maker with respect to whether an individual is a Complainant for purposes of the Code.
- (7) Conduct Officer: A University employee designated by the Director of OSC to present information on behalf of OSC to the Student Conduct Board. The Conduct Officer shall be employed in the Division of Student Life but is not required to be employed by OSC. However, in a case involving alleged academic dishonesty in which OSC has not issued a Notice of Allegations, the instructor generally will be designated as the Conduct Officer.
- (8) Consent: When used in connection with sexual misconduct, 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 a person has communicated an agreement to engage in a specific sexual act generally is evaluated from the perspective of what a reasonable person who perceived the individual's words and/or non-verbal actions would have understood; however, in the context of a long-term relationship between persons that has involved sexual activity and a pattern of communicating consent, whether consent has been communicated may be evaluated based on a subjective standard (i.e., what did the specific person who initiated the specific sexual act conclude?). A verbal "no" (or words equivalent to "no"), even if it sounds insincere or indecisive, always means that consent has not been communicated, or if previously communicated

has been withdrawn. The absence of a verbal "no" does not necessarily mean that consent has been communicated. Because interpreting non-verbal actions may lead to misunderstanding and a violation of this policy, students are strongly encouraged to err on the side of caution and not rely solely on the non-verbal actions of another person in concluding that the other person has communicated consent. The University urges students to 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. 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.

- (9) Course of Conduct: Two 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.
- (10) Dating Violence: 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.
- (11) Disciplinary Hold: The University hold described in Section .06(4)(b).
- (12) Disciplinary Records: A written record that personally identifies a Respondent and is maintained by OSC and Community Standards.
- (13) Domestic Violence: An act that is prohibited by local, state, or federal law and defined as a felony or misdemeanor crime of violence, if 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.
- (14) Faculty Member or Instructor: A person hired by the University to conduct teaching, research, or supervised clinical placements.
- (15) Formal Hearing: A SCB Hearing, a hearing before a Student Life Hearing Officer, and/or a UAPA Hearing.
- (16) Good Faith: Having a belief in the truth of information that a reasonable person in the same position could have, based on the information known to the person communicating

the information at the time the information was communicated by that person. Information is not communicated in good faith if it is communicated with knowing or reckless disregard for information that would negate the former information.

- (17) Incapacitated or Incapacitation: 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) Knoxville Area: The geographical area that consists of the following counties in the state of Tennessee: Knox, Anderson, Union, Grainger, Jefferson, Sevier, Blount, Loudon, and Roane.
- (19) Member of the University Community: A person who is a student, University employee, University volunteer, invited visitor to University-controlled property, or participant in a University-affiliated activity.
- (20) Notice or Notify (given to students): Written notice transmitted by United States mail, courier service, or hand delivery to the address the University's Registrar has on file for the student; and/or by e-mail to a student's University-provided e-mail account. When a notice is transmitted by United States mail or courier service, the notice is effective on the date that it is mailed or delivered to the courier service. When a notice is transmitted by hand delivery, the notice is effective on the date that it is delivered to the person to whom the notice is addressed. When a notice is transmitted by e-mail, the notice is effective on the date that the e-mail is sent. A student's University-issued email address is the official method of communication used by OSC.
- (21) OSC: The Office of Student Conduct and Community Standards, which acts through University employees designated by the Director of OSC to act on behalf of the University in the student conduct process, including, without limitation University employees who work in OSC and University employees who work in University Housing.
- (22) Possession: 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.

- (23) Reasonable Person: A sober, objectively reasonable person in the same situation, and with the same sex, gender identity, and sexual orientation as the person whose words and/or conduct are being evaluated.
- (24) Relationship Violence: Dating violence and/or domestic violence.
- (25) Relevant Information: Information having any tendency to make the existence of any fact that is of consequence to determining whether the Respondent violated the Standards of Conduct more probable or less probable than it would be without the information.
- (26) Respondent: A student who has been accused of violating the Standards of Conduct and/or whose conduct is being investigated by OSC.
- (27) Retaliation: An act taken by a student (including, without limitation, an act taken through a third party) because of another person's participation in a protected activity that would discourage a reasonable person from engaging in protected activity. Protected activity means a person's good faith: (1) opposition to conduct prohibited under the Standards of Conduct; (2) report to the University about conduct prohibited under the Standards of Conduct to the University; (3) participation (or reasonable expectation of participation) in any manner in an investigation, meeting, hearing, or interim measure; or (4) exercise of rights or responsibilities under any provision of the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act. 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.
- (28) Sanction: An administrative sanction and/or a developmental sanction.
- (29) SCB: Student Conduct Board.
- (30) Sexual Assault: Engaging in sexual contact or sexual intercourse with another person without the consent of that person.
- (31) Sexual Contact: The intentional touching of another person (including, without limitation, 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, without limitation, 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.
- (32) Sexual Exploitation: 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.

- (33) Sexual Harassment: 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.
- (34) Sexual Intercourse: 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.
- (35) Sexual Misconduct: Sexual harassment, sexual assault, and/or sexual exploitation.
- (36) Staff Member: A person employed by the University on a part- or full-time basis, primarily involved in planning, organizing, staffing, directing and controlling efforts to achieve the goals and objectives of the University.
- (37) Stalking: 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.
- (38) Standards of Conduct: Chapter 1720-04-03-.04.
- (39) Student: For purposes of the Code, the term "student" means:
- (a) A person enrolled or registered for study at the University, either full-time or part-time, pursuing undergraduate, graduate, or professional studies, as well as non-degree and non-credit programs and courses;
  - (b) A student organization;
  - (c) A person who has completed the immediately preceding academic term and is eligible for re-enrollment;

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

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

- (50) Weapon: Any device, instrument, or substance that is designed to, or reasonably could be expected to, inflict a wound, incapacitate, or cause serious bodily injury or death, including, but not limited to, firearms (loaded and unloaded, real firearms and devices that would reasonably appear to a law enforcement officer to be real firearms), ammunition, electronic control devices (such as tasers and stun guns), devices designed to discharge an object (such as bb guns, air guns, pellet guns, potato guns, and slingshots, but not water guns), explosives, dangerous chemicals (such as mace, tear gas, and oleoresin capsicum), martial arts weapons, bows and arrows, artificial knuckles, nightsticks, blackjacks, dirks, daggers, swords, and knives with fixed blades longer than four (4) inches. The term "weapon" does not include pocket knives that fold (but not excluding switchblades); chemical repellents available over-the-counter for self-defense; instruments used solely for personal hygiene, preparation of food, maintenance, University-related instruction, or University employment-related duties.
- (51) Written: To communicate words either on paper and/or electronically. For example, a notice delivered via e-mail constitutes a written notice under the Code.

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

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

~~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), ammunition, electronic control devices (such as tasers and stun guns), devices designed to discharge an object (such as bb guns, air guns, pellet guns, potato guns, and slingshots, but not water guns), explosives, dangerous chemicals (such as mace, tear gas, and oleoresin capsicum), martial arts weapons, bows and arrows, artificial knuckles, nightsticks, blackjacks, dirks, daggers, swords, and knives with fixed blades longer than four (4) inches. The term "weapon" does not include pocket knives that fold (but not excluding switchblades); chemical repellents available over the counter for self defense; instruments used solely for personal hygiene, preparation of food, maintenance, University-related instruction, or University-employment-related duties.

- (10) The term "notice" means notice given in writing and transmitted by United States mail, courier service, and/or hand delivery to the address the University's Registrar has on file for the student; and/or by e-mail to the student's University-provided e-mail account. When a notice is transmitted by United States mail or courier service, the notice is effective on the date that it is mailed or delivered to the courier service. When a notice is transmitted by hand delivery, the notice is effective on the date that it is delivered to the person to whom the notice is addressed. When a notice is transmitted by e-mail, the notice is effective on the date that the e-mail is sent.
- (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 a 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.~~

- (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](http://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.

- (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 Uniform Administrative Procedures Act, Tennessee Code Annotated, § 4-5-301, et seq. The University's procedures for conducting contested case hearings under the 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.~~
- (6) ~~Harassment, which is defined as unwelcome conduct that is so severe or pervasive, and objectively offensive, that it substantially interferes with the ability of a person to work, learn, live, or participate in or benefit from the services, activities, or privileges provided by the University. In no event shall this rule be construed to discipline a student for speech protected by the First Amendment to the United States Constitution (e.g., mere insulting or offensive speech).~~
- (7) ~~Engaging in sexual misconduct, relationship violence, or stalking.~~
- (8) ~~Invasion of another person's privacy when that person has a reasonable expectation of privacy, including, but not limited to, using electronic or other means to make a video or photographic record of any person in a location in which the person has a reasonable expectation of privacy, without the person's knowledge or consent. This includes, but is not limited to, making a video or photographic record of a person in shower/locker rooms or restrooms. The storing, sharing, and/or distributing of such unauthorized recordings by any means is also prohibited.~~
- (9) ~~Theft, misappropriation, unauthorized possession, or unauthorized sale of private or public property, including but not limited to University-controlled property.~~
- (10) ~~Vandalizing, destroying, damaging, engaging in conduct that reasonably could cause~~

damage to, or misusing private or public property, including but not limited to University-controlled property.

- (11) ~~Participating in hazing. "Hazing" is defined as any intentional or reckless act, on or off University-controlled property, by one (1) student, acting alone or with others, which is directed against any other student, which endangers the mental or physical health or safety of that student, or which induces or coerces a student to endanger his or her mental or physical health or safety. "Hazing" does not include customary athletic events or similar contests or competitions and is limited to those actions taken and situations created in connection with initiation into or affiliation with any organization.~~
- (12) ~~Engaging in disorderly conduct, which means: fighting or other physically violent or physically threatening conduct; creating a hazardous or physically offensive condition by any act that serves no legitimate purpose; making noise that could unreasonably disturb others who are carrying on lawful activities; or conduct that breaches the peace.~~
- (13) ~~Engaging in lewd, indecent, or obscene conduct. "Lewd, indecent, or obscene" conduct includes, but is not limited to, public exposure of one's sexual organs, public urinating, and public sexual acts.~~
- (14) ~~Engaging in speech, either orally or in writing, that is directed to inciting or producing imminent lawless action and is likely to incite or produce such action.~~
- (15) ~~Any act of arson; falsely reporting a fire, the presence of an explosive or incendiary device, or other emergency; setting off a false fire alarm; or tampering with, removing, or damaging fire alarms, fire extinguishers or any other safety or emergency equipment from its proper location except when removed in a situation in which there is a reasonable belief of the need for such equipment.~~
- (16) ~~Possessing, using, or duplicating University keys, access cards, or identification cards without authorization; possessing, using, or entering University-controlled property without authorization.~~
- (17) ~~Theft, misuse, or unauthorized use of information technology facilities, resources, or access codes, including, but not limited to: unauthorized entry into or transfer of a file; using another person's identification and/or password without that person's consent; using information technology facilities or resources to interfere with the work of another student, faculty member, staff member, or other member of the University community; using information technology facilities or resources to interfere with normal operation of a University information technology system or network; circumventing University information technology system or network security; using information technology facilities or resources in violation of copyright laws; falsifying an e-mail header; and conduct that violates the University's policy on the Acceptable Use of Information Technology Resources.~~
- (18) ~~Possessing, using, storing, or manufacturing any weapon or any facsimile of a weapon on University-controlled property or in connection with a University-affiliated activity, unless authorized in writing by the Chief of Police or his/her designee.~~
- (19) ~~Consuming, manufacturing, possessing, distributing, dispensing, selling, or being under the influence of alcoholic beverages on University-controlled property or in connection with a University-affiliated activity.~~

- ~~(20) Consuming, manufacturing, possessing, distributing, dispensing, selling, or being under the influence of alcoholic beverages, if prohibited by federal, state, or local law.~~
- ~~(21) Providing an alcoholic beverage to a person younger than twenty-one (21) years of age, unless permitted by law.~~
- ~~(22) Using, manufacturing, possessing, distributing, selling, dispensing, or being under the influence of drugs or drug paraphernalia, if prohibited by federal, state, or local law; using or possessing a prescription drug if the prescription was not issued to the student; or distributing or selling a prescription drug to a person to whom the prescription was not originally issued.~~
- ~~(23) Failing to pay a University bill, account, or other University financial obligation.~~
- ~~(24) Failing to respond to a request to report to a University administrative office; failing to comply with a lawful directive of a University employee or other public official acting within the scope of his/her duties; or failing to identify oneself to a University employee or other public official acting within the scope of his/her duties when requested to do so.~~
- ~~(25) Failing to appear at a University hearing, including, but not limited to, a hearing of a University judicial board, following a request to appear either as a party or as a witness.~~
- ~~(26) Violating the terms of an interim suspension, a no-contact directive, or a disciplinary penalty imposed by the University.~~
- ~~(27) Obstructing or disrupting teaching, learning, studying, research, public service, administration, disciplinary proceedings, emergency services, or any other University-affiliated activity, or the free flow of pedestrian or vehicular traffic. In no event shall this rule be construed to discipline a student for speech protected by the First Amendment to the United States Constitution.~~
- ~~(28) Violating a University policy or rule, including but not limited to University policies or rules relating to facilities use, smoking, the acceptable use of information technology resources, research or service misconduct, finder's fees relating to clinical investigations involving human subjects or access to University data or materials, University libraries, dining services, parking or transportation, University identification card use, sexual harassment, residence halls, and registered student organizations.~~
- ~~(29) Committing an act that is prohibited by local, state, or federal law.~~
- ~~(30) Attempting to commit a violation of a Standard of Conduct or being an accessory to the commission of an act or attempted act in violation of a Standard of Conduct.~~
- ~~(31) Engaging in retaliation.~~

~~1720-04-03-06 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, these 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 (see 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.~~

University of Tennessee Rules  
 Chapter 1720-04-03 Student Code of Conduct

\* 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				
Charles C. Anderson, Jr.	X				
Jalen K. Blue	X				
Shannon Brown				X	
George E. Cates	X				
Spruell Driver, Jr.	X				
Dr. William E. Evans	X				
J. Brian Ferguson	X				
John N. Foy	X				
D. 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. Pryse	X				
Rhedona Rose	X				
John D. Tickle	X				
Julia T. Wells	X				
Charles E. Wharton	X				
Tommy G. Whittaker	X				

University of Tennessee Rules  
Chapter 1720-04-03 Student Code of Conduct

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the University of Tennessee Board of Trustees on 10/09/2015, 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: 11/24/2015

Signature: 

Name of Officer: Matthew Scoggins

Title of Officer: Deputy General Counsel

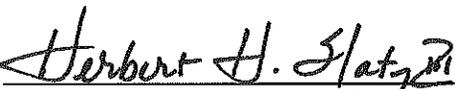
Subscribed and sworn to before me on: 11-24-15

Notary Public Signature: 

My commission expires on: 12-4-18



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



Herbert H. Slatery III  
Attorney General and Reporter

12/10/2015

Date

Department of State Use Only

Filed with the Department of State on: 5/11/16

Effective on: 8/13/16



Tre Hargett  
Secretary of State

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