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Division of Publications**

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Sequence Number: 08-15-15
Rule ID(s): 6003
File Date: 8/18/15
Effective Date: 11/15/15

Proposed Rule(s) Filing Form

Proposed rules are submitted pursuant to Tenn. Code Ann. §§ 4-5-202, 4-5-207, and 4-5-229 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within ninety (90) days of the filing of the proposed rule with the Secretary of State. To be effective, the petition must be filed with the Agency and be signed by twenty-five (25) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.

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

Agency/Board/Commission:	Tennessee Board of Regents
Division:	System-wide Student Rules
Contact Person:	Mary G. Moody
Address:	Office of General Counsel 1415 Murfreesboro Rd., Ste. 336
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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
0240-02-03	Student Conduct and Disciplinary Sanctions
Rule Number	Rule Title
0240-02-03-.01	Institution Policy Statement
0240-02-03-.02	Disciplinary Offenses
0240-02-03-.03	Academic and Classroom Misconduct
0240-02-03-.04	Disciplinary Sanctions
0240-02-03-.05	Traffic and Parking
0240-02-03-.06	Disciplinary Procedures

Chapter 0240-02-03
Student Conduct and Disciplinary Sanctions

Amendments

Rule 0240-02-03-.01 Institution Policy Statement paragraph (1) is amended by changing "technology centers" to "colleges of applied technology" so that, as amended, paragraph (1) shall read:

- (1) Students enrolled in postsecondary educational institutions are citizens of their civic communities as well as the academic community. As such they are expected to conduct themselves as law-abiding members of each community at all times. Admission to an institution of postsecondary education carries with it special privileges and imposes special responsibilities apart from those rights and duties enjoyed by non-students. In recognition of the special relationship that exists between the institution and the academic community which it seeks to serve, the Tennessee Board of Regents ("TBR" or "the Board") has authorized the presidents of the institutions and directors of the colleges of applied technology under its jurisdiction to take such action as may be necessary to maintain campus conditions and preserve the integrity of the institution and its educational environment.

Rule 0240-02-03-.01 Institution Policy Statement paragraph (2) is amended by changing the language in the third full sentence as below and replacing "regulations" with "policies" so that, as amended, paragraph (2) shall read:

- (2) Pursuant to this authorization and in fulfillment of its duties to provide a secure and stimulating atmosphere in which individual and academic pursuits may flourish, the TBR has developed the following regulations, which are intended to govern student conduct on the several campuses under its jurisdiction. Each institution under the jurisdiction of the TBR is directed to implement policies subject to, and consistent with, these regulations. In student discipline policies, each institution may supplement these regulations, subject to prior review and approval by the TBR Offices of General Counsel and Academic Affairs. In addition, students are subject to all federal, state and local laws and ordinances. If a student's violation of such laws or ordinances also adversely affects the institution's pursuit of its educational objectives, the institutions may enforce their own policies regardless of the status or outcome of any external proceedings instituted by other civil or criminal authorities.

Rule 0240-02-03-.01 Institution Policy Statement paragraph (3) is amended by changing the language in the fourth full sentence to remove "Finally" and to add "policies and" so that, as amended, paragraph (3) shall read:

- (3) For the purpose of these regulations, a "student" shall mean any person who is admitted and/or registered for study at a TBR institution for any academic period. This shall include any period of time following admission and/or registration, but preceding the start of classes for any academic period. It will also include any period which follows the end of an academic period through the last day for registration for the succeeding academic period, and during any period while the student is under suspension from the institution. "Student" shall also include any person subject to a period of suspension or removal from campus as a sanction which results from a finding of a violation of the policies and regulations governing student conduct. Students are responsible for compliance with the Rules of Student Conduct and with similar institutional policies at all times.

Rule 0240-02-03-.01 Institution Policy Statement paragraph (4) is amended by changing the language in the first full sentence to add "policies and" and removing the last sentence so that, as amended, paragraph (4) shall read:

- (4) Disciplinary action may be taken against a student for violation of the policies and regulations which occur on institutionally owned, leased or otherwise controlled property, while participating in international or distance learning programs, and off campus, when the conduct impairs, interferes with, or obstructs any institutional activity or the mission, processes, and functions of the institution.

Authority: T.C.A. §§ 4-5-101 et seq. and 49-8-203. Administrative History: Repeal of all rules by Public Chapter 261; effective July 1, 1983. New rule filed April 28, 1983; effective July 13, 1983. Amendment filed August 28, 1984; effective November 13, 1984. Amendment filed November 12, 2008; effective March 30, 2009. Repeal and new rule filed August 10, 2011; effective January 29, 2012.

Rule 0240-02-03-.02 Disciplinary Offenses paragraph (2) is amended by changing “of the Board” and “by the Board” respectively to “by the TBR Offices of General Counsel and Academic Affairs” so that, as amended, paragraph (2) shall read:

- (2) Institutions shall adopt and publish a non-exclusive list, providing notice of offenses for which both individuals and organizations may be subject to disciplinary action. The list may include any appropriate offense given the specific needs of the individual institution, subject to prior review and approval by the TBR Offices of General Counsel and Academic Affairs. Institutions are pre-authorized to implement any or all of the disciplinary offenses, in the form set forth immediately below, without need for prior review or approval by the TBR Offices of General Counsel and Academic Affairs:

Rule 0240-02-03-.02 Disciplinary Offenses paragraph (2), subparagraph (a) is amended by changing the language as below, and removing parts 1. – 3. so that, as amended, subparagraph (a) shall read:

- (a) Threatening or Disruptive Conduct. Any conduct, or attempted conduct, which poses a threat to the safety of others or where the student's behavior is disruptive of the institution's learning environment;

Rule 0240-02-03-.02 Disciplinary Offenses paragraph (2), subparagraph (r) is amended by changing “Rules and Regulations” to “Policies” so that, as amended, subparagraph (r) shall read:

- (r) Violation of General Policies. Any violation of the general policies of the institution as published in an official institutional publication, including the intentional failure to perform any required action or the intentional performance of any prohibited action;

Rule 0240-02-03-.02 Disciplinary Offenses paragraph (2), subparagraph (t) is amended by including “if a student's violation of such laws or regulations also adversely affects the institution's pursuit of its educational” before objectives and removing the remainder of the language so that, as amended, subparagraph (t) shall read:

- (t) Violations of State or Federal Laws. Any violation of state or federal laws or regulations proscribing conduct or establishing offenses, if a student's violation of such laws or regulations also adversely affects the institution's pursuit of its educational objectives;

Rule 0240-02-03-.02 Disciplinary Offenses paragraph (2), subparagraph (v) is amended by changing “Battery or Rape” to “Misconduct” and adding the citation “TBR Policy 6:03:00:00 and removing “state law” so that, as amended, subparagraph (v) shall read:

- (v) Sexual Misconduct. Committing any act of sexual misconduct as defined by TBR Policy 6:03:00:00;

Rule 0240-02-03-.02 Disciplinary Offenses paragraph (2), subparagraph (w) is amended by adding the citation “(F), 6:01:00:00, 6:02:00:00,” and removing “2:02:10:01” so that, as amended, subparagraph (w) shall read:

- (w) Harassment or Retaliation. Any act by an individual or group against another person or group in violation of TBR policies, as well as federal and/or state laws prohibiting discrimination, including, but not limited to, TBR policies 5:01:02:00,(F), 6:01:00:00, 6:02:00:00, and TBR Guideline P-080;

Rule 0240-02-03-.02 Disciplinary Offenses paragraph (2), subparagraph (y) is amended by adding “with the intent to use or make available for use by others” so that, as amended, subparagraph (y) shall read:

- (y) Unauthorized Duplication or Possession of Keys. Making, causing to be made or the possession of, with the intent to use or make available for use by others, any key for an institutional facility without proper authorization;

Rule 0240-02-03-.02 Disciplinary Offenses paragraph (3) is amended by adding “or institutional policies” to the first sentence and “the student leaves the institution, including after” to the third sentence so that, as amended, paragraph (3) shall read:

- (3) Disciplinary action may be taken against a student for violations of the foregoing regulations or

institutional policies which occur at or in association with enrollment at an institution governed by the TBR for any academic period. Each student shall be responsible for his/her conduct from the time of application for admission through the actual awarding of a degree including periods prior to or between semesters. Conduct occurring while a student is registered or enrolled at the institution, but not discovered until after the student leaves the institution, including after the awarding of a degree is actionable under these provisions and may result in the retroactive application of a disciplinary sanction. Should a student withdraw from the institution with disciplinary action or academic misconduct action pending, the student's record may be encumbered by the appropriate institutional office until the proceedings have been concluded.

Authority: T.C.A. §§ 4-5-101 et. seq., 49-7-123(a)(1) and 49-8-203. Administrative History: Repeal of all rules by the Public Chapter 261; effective July 1, 1983. New rule filed April 28, 1983; effective July 13, 1983. Amendment filed August 28, 1984; effective November 13, 1984. Amendment filed May 13, 1991; effective August 28, 1991. Amendment filed July 3, 1996; effective November 28, 1996. Amendment filed November 20, 1996; effective March 28, 1997. Amendment filed February 18, 1999; effective June 28, 1999. Amendment filed August 11, 2004; effective December 29, 2004. Amendments filed November 12, 2008; effective March 30, 2009. Repeal and new rule filed August 10, 2011; effective January 29, 2012.

Rule 0240-02-03-.03 Academic and Classroom Misconduct paragraph (1) is amended by changing "the general" to "these" and "and regulations" to "or policies" deleting the present language in its entirety and substituting new language so that, as amended, paragraph (1) shall read:

- (1) The instructor has the primary responsibility for maintenance of academic integrity and controlling classroom behavior, and can order the temporary removal or exclusion from the classroom of any student engaged in disruptive conduct or conduct that violates these rules, or policies of the institution, for each class session during which the conduct occurs. Extended or permanent exclusion from the classroom, beyond the session in which the conduct occurred, or further disciplinary action can be effected only through appropriate procedures of the institution.

Rule 0240-02-03-.03 Academic and Classroom Misconduct paragraph (4) is amended by removing the examples in parenthesis so that, as amended, paragraph (4) shall read:

- (4) Disruptive behavior in the classroom may be defined as, but not limited to, behavior that obstructs or disrupts the learning environment (e.g., offensive language, harassment of students and professors, repeated outbursts from a student which disrupt the flow of instruction or prevent concentration on the subject taught, failure to cooperate in maintaining classroom decorum, etc.), text messaging, and the continued use of any electronic or other noise or light emitting device which disturbs others.

Authority: T.C.A. §§ 4-5-101 et seq. and 49-8-203. Administrative History: Repeal of all rules by Public Chapter 261; effective July 1, 1983. New rule filed April 28, 1983; effective July 13, 1983. Amendment filed August 28, 1984; effective November 13, 1984. Amendment filed August 11, 2004; effective December 29, 2004. Repeal and new rule filed August 10, 2011; effective January 29, 2012.

Rule 0240-02-03-.04 Disciplinary Sanctions paragraph (1) is amended by changing "of the Board" to "by the TBR Offices of General Counsel and Academic Affairs" and removing "by the Board" so that, as amended, paragraph (1) shall read:

- (1) Institutions shall adopt and publish a policy, providing notice of potential disciplinary sanctions applicable to both individuals and organizations. The policy may include any appropriate sanction, given the specific needs of the individual institution, subject to prior review and approval by the TBR Offices of General Counsel and Academic Affairs. Institutions are pre-authorized to implement any or all of the sanctions, in the form set forth in sub-section (2) below, without need for prior review or approval. Upon a determination that a student or student organization has violated any of the disciplinary offenses set forth in these regulations, institutional disciplinary policies, or the general policies of an institution, disciplinary sanctions may be imposed, either singly or in combination, by the appropriate institution or school officials.

Rule 0240-02-03-.04 Disciplinary Sanctions paragraph (2), subparagraph (m) is amended by changing the title and the text to include "Interim Involuntary Withdrawal" and the language "or institutional policies" in sentence one as well as removing and replacing sentence two so that, as amended, subparagraph (m) shall read:

- (m) Interim Involuntary Withdrawal or Suspension. As a general rule, the status of a student or student organization accused of violation of these regulations or institutional policies should not be altered until a final determination has been made in regard to the charges. However, interim involuntary withdrawal or suspension, pending the completion of disciplinary procedures, may be imposed upon a finding by the appropriate institutional official that the conduct, or attempted conduct of the student poses a direct threat to the safety of any other member of the institution, its guests, property, or the student's behavior is materially and substantially disruptive of the institution's learning environment, or other campus activities. In any case of interim involuntary withdrawal or suspension, the student, or student organization, shall be given an opportunity at the time of the decision, or as soon thereafter as reasonably possible, to contest the suspension;

Rule 0240-02-03-.04 Disciplinary Sanctions paragraph (2), subparagraph (n) is amended by changing "regulations" to "policies" so that, as amended, paragraph (n) shall read:

- (n) Housing Probation. Continued residence in campus or student housing may be conditioned upon adherence to these regulations as well as institutional housing policies. Any resident placed on housing probation will be notified in writing of the terms and length of the probation. Probation may include restrictions upon the activities of the resident, including any other appropriate special condition(s);

Rule 0240-02-03-.04 Disciplinary Sanctions paragraph (3) is amended by removing the paragraph in its entirety.

Authority: T.C.A. §§ 4-5-101 et seq. and 49-8-203. Administrative History: Repeal of all rules by Public Chapter 261; effective July 1, 1983. New rule filed April 28, 1983; effective July 13, 1983. Amendment filed August 28, 1984; effective November 13, 1984. Amendment filed August 11, 2004; effective December 29, 2004. Amendments filed November 12, 2008; effective March 30, 2009. Repeal and new rule filed August 10, 2011; effective January 29, 2012.

Rule 0240-02-03-.05 Traffic and Parking paragraph (1) is amended by changing "regulations" to "policies" so that, as amended, paragraph (1) shall read:

- (1) General: Institutions governed by the TBR shall adopt institutional policies governing traffic and parking on their respective campuses. The purpose of these policies shall be to facilitate the orderly and efficient flow of traffic on those campuses, to provide a safe atmosphere for both pedestrians and motor vehicle operators, and to provide order with regard to parking within limited space. Institutional policies enacted in compliance with this rule shall be subject to prior review and approval of the TBR. Once adopted, such policies shall be published, at least annually, and, as appropriate, through signage, traffic/parking handbooks, student/faculty handbooks and institutional websites.

Authority: T.C.A. §§ 4-5-101 et seq. and 49-8-203. Administrative History: Original rule filed August 10, 2011; effective January 29, 2012.

Rule 0240-02-03-.06 Disciplinary Procedures paragraph (1) is amended by changing "regulations" to "policies" and removing "by the Board of Regents" so that, as amended, paragraph (1) shall read:

- (1) General: Institutions governed by the TBR, in the implementation of TBR policies pertaining to discipline and conduct of students, shall insure the constitutional rights of students by affording a system of constitutionally and legally sound procedures which provide the protection of due process of law. In furtherance of this mandate, all TBR institutions shall enact policies setting forth the disciplinary procedures for the institution. All such policies shall be enacted in compliance with this rule, TBR Policy 3:02:01:00, and applicable state and federal law. All policies adopted pursuant to this rule shall be subject to prior review and approval. Once adopted or amended, all disciplinary procedures shall be affirmatively communicated to the faculty, staff, and students of the institution as well as published in appropriate websites, handbooks, or manuals.

Rule 0240-02-03-.06 Disciplinary Procedures paragraph (2) is amended by removing "or student organization" and "Tennessee" and adding subparagraph (a) so that, as amended, paragraph (2) and subparagraph (a) shall read:

- (2) Contested Case Procedure: All cases which may result in: (a) suspension or expulsion of a student from the institution for disciplinary reasons, or (b) revocation of registration of a student organization, is subject to the contested case provisions of the Uniform Administrative Procedures Act (UAPA), T.C.A. §§ 4-5-301 et seq., and shall be processed in accord with the Uniform Contested Case procedures adopted by the Board of Regents, unless the student or organization, after receiving written notice, waives those procedures and elects to have the case disposed of in accord with institutional procedures or waives all right to contest the case under any procedure. These procedures shall be described in the institution's policy.

- (a) For cases which may result in Interim Involuntary Withdrawal or Suspension, the institution must incorporate the guidelines set forth herein at (6) in its decision-making processes.

Rule 0240-02-03-.06 Disciplinary Procedures paragraph (6) is amended by changing the title and the text to include "Interim Involuntary Withdrawal" and the language "imposed prior to" in sentence one as well as adding subparagraphs (a) – (d) so that, as amended, paragraph (6) and subparagraphs (a) - (d) shall read:

- (6) Interim Involuntary Withdrawal or Suspension Hearings: Hearings conducted with regard to interim involuntary withdrawals or suspensions, imposed prior to or pending the outcome of a disciplinary investigation or proceeding shall be conducted consistent with the minimum requirements of due process applicable to the institutional hearing, taking into account the need for a timely hearing. The evidence presented at the hearing shall be limited to that which is relevant to the basis asserted for imposition of the interim involuntary withdrawal or suspension.
- (a) In determining whether a student should be involuntarily withdrawn or suspended for threatening or disruptive conduct, the institution shall consider the nature, duration, severity, and probability of the threat posed and/or the disruption caused by a student, relying on the best available objective evidence and, if applicable and obtainable, the most current medical evidence.
- (b) The institution shall also determine whether reasonable modifications of its policies, practices, or procedures could sufficiently mitigate the risk.
- (c) Absent exigent circumstances creating an imminent risk of harm, the assessment will be made prior to a decision to involuntarily withdraw or suspend based on the threat he or she poses to others.
- (d) If exigent circumstances warrant the immediate removal of a student from the institution, the student will receive, at a minimum, notice and an initial opportunity to present evidence immediately after being placed on involuntary withdrawal and the opportunity to initiate full due process within thirty (30) days of the removal.

Rule 0240-02-03-.06 Disciplinary Procedures paragraph (8) is amended by removing the paragraph in its entirety.

Authority: T.C.A. §§ 4-5-101 et seq. and 49-8-203. Administrative History: Original rule filed August 10, 2011; effective January 29, 2012

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Governor Haslam				X	
Dr. Russ Deaton				X	
Gregory Duckett	X				
Darrell Freeman	X				
Tom Griscom	X				
Commissioner Julius Johnson				X	
Fran Marcum	X				
Commissioner Candice McQueen				X	
Barbara Prescott	X				
Rebecca Reeves	X				
Emily Reynolds	X				
Howard Roddy	X				
Leigh Shockey	X				
Parker Smith	X				
Johnny Stites	X				
Robert Thomas	X				
Danni Varlan	X				
Dotty Webb	X				

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Tennessee Board of Regents on 06-19-15, and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of ninety (90) days of the filing of the proposed rule with the Secretary of State.



Date: July 22, 2015

Signature: Mary G. Moody

Name of Officer: Mary G. Moody

Title of Officer: General Counsel & Board Secretary

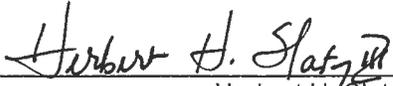
Subscribed and sworn to before me on: July 22, 2015

Notary Public Signature: [Signature]

My commission expires on: 2-6-17

Tennessee Board of Regents Rules
0240-02-03 Student Conduct and Disciplinary Sanctions
0240-02-03-.01 Institution Policy Statement
0240-02-03-.02 Disciplinary Offenses
0240-02-03-.03 Academic and Classroom Misconduct
0240-02-03-.04 Disciplinary Sanctions
0240-02-03-.05 Traffic and Parking
0240-02-03-.06 Disciplinary Procedures

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

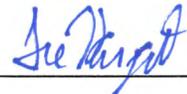


Herbert H. Slatery III
Attorney General and Reporter
7/21/2015

Date

Department of State Use Only

Filed with the Department of State on: 8/18/15
Effective on: 11/15/15



Tre Hargett
Secretary of State

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PUBLICATIONS

Regulatory Flexibility Addendum

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

N/A

Impact on Local Governments

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

No Impact on Local Governments.

Additional Information Required by Joint Government Operations Committee

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

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

Rule amendment due to complaint settlement with Office of Civil Rights ("OCR"). OCR ruled that the direct threat analysis applies only to an individual who represents a direct threat to the health and safety of others, and does not apply to the individual constituting a threat to himself/herself. Requires a change in Board and institutional policy, and a revision to Systemwide Rule 0240-02-03-.02 Disciplinary Offences, paragraph (2), eliminating language related to conduct dangerous to self, and setting out the procedures for determining disciplinary actions.

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

Section 504 at 34 C.F.R. § 104.3(1)(3) defines a qualified individual with a disability. Title II regulation at 28 C.F.R. § 35.139 provides that, a "direct threat" standard applies to situations where a college proposes to take adverse action (such as expulsion) against a student whose disability poses a significant risk to the health or safety of others. A significant risk constitutes a high probability of substantial harm and not just a slightly increased, speculative, or remote risk. To make the determination that a person poses a "direct threat," an institution must make an individualized assessment based on reasonable judgment relying on the most current medical knowledge or the best available objective evidence. This assessment must determine the nature, duration, and severity of the risk, the probability that the potentially threatening injury will actually occur, and whether reasonable modifications of policies, practices, or procedures will significantly mitigate the risk without fundamentally altering the nature of the service, program, or activity.

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

TBR Board members, University and College administration, and students, all of who urge adoption.

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

None

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

None

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

Mary G. Moody
General Counsel
Tennessee Board of Regents

Donald R. Ungurait
Associate General Counsel
Tennessee Board of Regents

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

Mary G. Moody
General Counsel
Tennessee Board of Regents

Donald R. Ungurait
Associate General Counsel
Tennessee Board of Regents

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

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

None

RULES
OF
TENNESSEE BOARD OF REGENTS

CHAPTER 0240-02-03
STUDENT CONDUCT AND DISCIPLINARY SANCTIONS

0240-02-03-.01 INSTITUTION POLICY STATEMENT.

- (1) Students enrolled in postsecondary educational institutions are citizens of their civic communities as well as the academic community. As such they are expected to conduct themselves as law-abiding members of each community at all times. Admission to an institution of postsecondary education carries with it special privileges and imposes special responsibilities apart from those rights and duties enjoyed by non-students. In recognition of the special relationship that exists between the institution and the academic community which it seeks to serve, the Tennessee Board of Regents ("TBR" or "the Board") has authorized the presidents of the institutions and directors of the ~~technology centers~~ **colleges of applied technology** under its jurisdiction to take such action as may be necessary to maintain campus conditions and preserve the integrity of the institution and its educational environment.
- (2) Pursuant to this authorization and in fulfillment of its duties to provide a secure and stimulating atmosphere in which individual and academic pursuits may flourish, the TBR has developed the following regulations, which are intended to govern student conduct on the several campuses under its jurisdiction. Each institution under the jurisdiction of the TBR is directed to implement policies subject to, and consistent with, these regulations. In student discipline policies, each institution may ~~expand on~~ **supplement** these regulations, subject to **Board prior review and** approval **by the TBR Offices of General Counsel and Academic Affairs**. In addition, students are subject to all federal, state and local laws and ordinances. If a student's violation of such laws or ordinances also adversely affects the institution's pursuit of its educational objectives, the institutions may enforce their own **regulations policies** regardless of the status or outcome of any external proceedings instituted by other civil or criminal authorities.
- (3) For the purpose of these regulations, a "student" shall mean any person who is admitted and/or registered for study at a TBR institution for any academic period. This shall include any period of time following admission and/or registration, but preceding the start of classes for any academic period. It will also include any period which follows the end of an academic period through the last day for registration for the succeeding academic period, and during any period while the student is under suspension from the institution. **Finally, "Student" "student"** shall also include any person subject to a period of suspension or removal from campus as a sanction which results from a finding of a violation of the **policies and** regulations governing student conduct. Students are responsible for compliance with the Rules of Student Conduct and with similar institutional policies at all times.
- (4) Disciplinary action may be taken against a student for violation of the **policies and** regulations which occur on institutionally owned, leased or otherwise controlled property, while participating in international or distance learning programs, and off campus, when the conduct impairs, interferes with, or obstructs any institutional activity or the mission, processes, and functions of the institution. ~~Institutions may enforce their own regulations regardless of the status or outcome of any external proceedings instituted in any other forum, including any civil or criminal proceeding.~~

Authority: T.C.A. §§ 4-5-101 et seq. and 49-8-203. Administrative History: Repeal of all rules by Public Chapter 261; effective July 1, 1983. New rule filed April 28, 1983; effective July 13, 1983. Amendment filed August 28, 1984; effective November 13, 1984. Amendment filed November 12, 2008; effective March 30, 2009. Repeal and new rule filed August 10, 2011; effective January 29, 2012.

0240-02-03-.02 DISCIPLINARY OFFENSES.

- (2) Institutions shall adopt and publish a non-exclusive list, providing notice of offenses for which both individuals and organizations may be subject to disciplinary action. The list may include any appropriate offense given the specific needs of the individual institution, subject to prior review and approval **of the Board by the TBR Offices of General Counsel and Academic Affairs**. Institutions are pre-authorized to implement any or all of the disciplinary offenses, in the form set forth immediately below, without

need for prior review or approval ~~by the Board~~ by the TBR Offices of General Counsel and Academic Affairs.

- (a) Threatening or Disruptive Conduct Dangerous to Self or Others. Any conduct, or attempted conduct, which poses a threat to the safety of others or where the student's behavior is disruptive of the institution's learning environment; ~~constitutes a danger to any person's health, safety, or personal well-being, including, but not limited to, the following:~~
- ~~1. Physical and/or verbal abuse,~~
 - ~~2. Threats and/or intimidation,~~
 - ~~3. Harm inflicted on self;~~
- (r) Violation of General Policies Rules and Regulations. Any violation of the general policies rules and regulations of the institution as published in an official institutional publication, including the intentional failure to perform any required action or the intentional performance of any prohibited action;
- (t) Violations of State or Federal Laws. Any violation of state or federal laws or regulations proscribing conduct or establishing offenses, if a student's violation of such laws or regulations also adversely affects the institution's pursuit of its educational objectives ~~which laws and regulations are incorporated herein by reference;~~
- (v) Sexual Misconduct Battery or Rape. Committing any act of sexual misconduct battery or rape as defined by TBR Policy 6:03:00:00 state law;
- (w) Harassment or Retaliation. Any act by an individual or group against another person or group in violation of TBR policies, as well as federal and/or state laws prohibiting discrimination, including, but not limited to, TBR policies 5:01:02:00, (F), 6:01:00:00, 6:02:00:00, 2:02:10:04 and TBR Guideline P-080;
- (y) Unauthorized Duplication or Possession of Keys. Making, causing to be made or the possession of, with the intent to use or make available for use by others, any key for an institutional facility without proper authorization;
- (3) Disciplinary action may be taken against a student for violations of the foregoing regulations or institutional policies which occur at or in association with enrollment at an institution governed by the TBR for any academic period. Each student shall be responsible for his/her conduct from the time of application for admission through the actual awarding of a degree including periods prior to or between semesters. Conduct occurring while a student is registered or enrolled at the institution, but not discovered until after the student leaves the institution, including after the awarding of a degree is actionable under these provisions and may result in the retroactive application of a disciplinary sanction. Should a student withdraw from the institution with disciplinary action or academic misconduct action pending, the student's record may be encumbered by the appropriate institutional office until the proceedings have been concluded.

Authority: T.C.A. §§ 4-5-101 et seq., 49-7-123(a)(1) and 49-8-203. Administrative History: Repeal of all rules by the Public Chapter 261; effective July 1, 1983. New rule filed April 28, 1983; effective July 13, 1983. Amendment filed August 28, 1984; effective November 13, 1984. Amendment filed May 13, 1991; effective August 28, 1991. Amendment filed July 3, 1996; effective November 28, 1996. Amendment filed November 20, 1996; effective March 28, 1997. Amendment filed February 18, 1999; effective June 28, 1999. Amendment filed August 11, 2004; effective December 29, 2004. Amendments filed November 12, 2008; effective March 30, 2009. Repeal and new rule filed August 10, 2011; effective January 29, 2012.

0240-02-03-.03 ACADEMIC AND CLASSROOM MISCONDUCT.

- (1) The instructor has the primary responsibility for maintenance of academic integrity and controlling classroom behavior, and can order the temporary removal or exclusion from the classroom of any student engaged in disruptive conduct or conduct that violates the general these rules, and regulations or policies of the institution, for each class session during which the conduct occurs. Extended or permanent

exclusion from the classroom, beyond the session in which the conduct occurred, or further disciplinary action can be effected only through appropriate procedures of the institution.

- (4) Disruptive behavior in the classroom may be defined as, but not limited to, behavior that obstructs or disrupts the learning environment (e.g., offensive language, harassment of students and professors, repeated outbursts from a student which disrupt the flow of instruction or prevent concentration on the subject taught, failure to cooperate in maintaining classroom decorum, etc.), text messaging, and the continued use of any electronic or other noise or light emitting device which disturbs others. ~~(e.g., disturbing noises from beepers, cell phones, palm pilots, lap-top computers, games, etc.)~~

Authority: T.C.A. §§ 4-5-101 et seq. and 49-8-203. Administrative History: Repeal of all rules by Public Chapter 261; effective July 1, 1983. New rule filed April 28, 1983; effective July 13, 1983. Amendment filed August 28, 1984; effective November 13, 1984. Amendment filed August 11, 2004; effective December 29, 2004. Repeal and new rule filed August 10, 2011; effective January 29, 2012.

0240-02-03-.04 DISCIPLINARY SANCTIONS.

- (1) Institutions shall adopt and publish a policy, providing notice of potential disciplinary sanctions applicable to both individuals and organizations. The policy may include any appropriate *sanction, given the specific needs of the individual institution, subject to prior review and approval* **by the TBR Offices of General Counsel and Academic Affairs of the Board**. Institutions are pre-authorized to implement any or all of the sanctions, in the form set forth in sub-section (2) below, without need for prior review or approval by the Board. Upon a determination that a student or student organization has violated any of the disciplinary offenses set forth in these regulations, institutional disciplinary policies, or the general policies of an institution, disciplinary sanctions may be imposed, either singly or in combination, by the appropriate institution or school officials.

- (2) Definition of Sanctions:

- (m) **Interim Involuntary withdrawal or** ~~Suspension. As a general rule, the status of a student or student organization accused of violation of these regulations~~ **or institutional policies** ~~should not be altered until a final determination has been made in regard to the charges. However,~~ **interim involuntary withdrawal or** ~~suspension, pending the completion of disciplinary procedures, may be imposed upon a finding by the appropriate institutional official that the continued presence of the accused on campus constitutes an immediate threat to the physical safety and well-being of the accused,~~ **conduct, or attempted conduct of the student poses a direct threat to the safety of** any other member of the institution, its guests, property, or ~~substantial disruption of classroom~~ **the student's behavior is materially and substantially disruptive of the institution's learning environment,** or other campus activities. In any case of **interim involuntary withdrawal or** suspension, the student, or student organization, shall be given an opportunity at the time of the decision, or as soon thereafter as reasonably possible, to contest the suspension;

- (n) Housing Probation. Continued residence in campus or student housing ~~may be conditioned upon adherence to these regulations as well as institutional housing~~ **policies regulations**. Any resident placed on housing probation will be notified in writing of the terms and length of the probation. Probation may include restrictions upon the activities of the resident, including any other appropriate special condition(s);

- ~~(3) The president/director of each institution is authorized, at his or her discretion, to intervene in order to negotiate a mutually acceptable resolution to any disciplinary proceeding, or, subsequently, to convert any sanction imposed to a lesser sanction, or to rescind any previous sanction, in appropriate cases.~~

Authority: T.C.A. §§ 4-5-101 et seq. and 49-8-203. Administrative History: Repeal of all rules by Public Chapter 261; effective July 1, 1983. New rule filed April 28, 1983; effective July 13, 1983. Amendment filed August 28, 1984; effective November 13, 1984. Amendment filed August 11, 2004; effective December 29, 2004. Amendments filed November 12, 2008; effective March 30, 2009. Repeal and new rule filed August 10, 2011; effective January 29, 2012.

0240-02-03-.05 TRAFFIC AND PARKING.

- (1) General: Institutions governed by the TBR shall adopt institutional policies governing traffic and parking on their respective campuses. The purpose of these **policies regulations** shall be to facilitate the orderly and efficient flow of traffic on those campuses, to provide a safe atmosphere for both pedestrians and motor vehicle operators, and to provide order with regard to parking within limited space. Institutional policies enacted in compliance with this rule shall be subject to prior review and approval of the TBR. Once adopted, such policies shall be published, at least annually, and, as appropriate, through signage, traffic/parking handbooks, student/faculty handbooks and institutional websites.

Authority: T.C.A. §§ 4-5-101 et seq. and 49-8-203. Administrative History: Original rule filed August 10, 2011; effective January 29, 2012.

0240-02-03-.06 DISCIPLINARY PROCEDURES

- (1) General: Institutions governed by the TBR, in the implementation of TBR **policies regulations** pertaining to discipline and conduct of students, shall insure the constitutional rights of students by affording a system of constitutionally and legally sound procedures which provide the protection of due process of law. In furtherance of this mandate, all TBR institutions shall enact policies setting forth the disciplinary procedures for the institution. All such policies shall be enacted in compliance with this rule, TBR Policy 3:02:01:00, and applicable state and federal law. All policies adopted pursuant to this rule shall be subject to prior review and approval **by the Board of Regents**. Once adopted or amended, all disciplinary procedures shall be affirmatively communicated to the faculty, staff, and students of the institution as well as published in appropriate websites, handbooks, or manuals.

- (2) Contested Case Procedure: All cases which may result in: (a) suspension or expulsion of a student, ~~or student organization~~, from the institution for disciplinary reasons, or (b) revocation of registration of a student organization, is subject to the contested case provisions of the **Tennessee** Uniform Administrative Procedures Act (**TUAPA**), T.C.A. §§ 4-5-301 et seq., and shall be processed in accord with the Uniform Contested Case procedures adopted by the Board of Regents, unless the student or organization, after receiving written notice, waives those procedures and elects to have the case disposed of in accord with institutional procedures or waives all right to contest the case under any procedure. These procedures shall be described in the institution's policy.

(a) For cases which may result in Interim Involuntary Withdrawal or Suspension, the institution must incorporate the guidelines set forth herein at (6) in its decision-making processes.

- (6) **Interim Involuntary Withdrawal or** Suspension Hearings: Hearings conducted with regard to **interim involuntary withdrawals or** suspensions, **imposed prior to** or pending the outcome of a disciplinary investigation or proceeding shall be conducted consistent with the minimum requirements of due process applicable to an institutional hearing, taking into account the need for a timely hearing. The evidence presented at the hearing shall be limited to that which is relevant to the basis asserted for imposition of the **interim involuntary withdrawal or** suspension.

(a) In determining whether a student should be involuntarily withdrawn or suspended for threatening or disruptive conduct, the institution shall consider the nature, duration, severity, and probability of the threat posed and/or the disruption caused by a student, relying on the best available objective evidence and, if applicable and obtainable, the most current medical evidence.

(b) The institutions shall also determine whether reasonable modifications of its policies, practices, or procedures could sufficiently mitigate the risk.

(c) Absent exigent circumstances creating an imminent risk or harm, the assessment will be made prior to a decision to involuntarily withdraw or suspend based on the threat he or she poses to others.

(d) If exigent circumstances warrant the immediate removal of a student from the institution, the student will receive, at a minimum, notice and an initial opportunity to present evidence

immediately after being placed on involuntary withdrawal, and the opportunity to initiate full due process within 30 days of the removal.

- (8) ~~The president /director of each institution is authorized, at his or her discretion, to intervene in order to negotiate a mutually acceptable resolution to any disciplinary proceeding, or, subsequently, to convert any finding or sanction imposed to a lesser finding or sanction, or to rescind any previous finding or sanction, in appropriate cases.~~

Authority: T.C.A. §§ 4-5-101 et seq. and 49-8-203. Administrative History: Original rule filed August 10, 2011; effective January 29, 2012.
