

**RULES
OF THE
TENNESSEE DEPARTMENT OF INTELLECTUAL AND DEVELOPMENTAL DISABILITIES
OFFICE OF GENERAL COUNSEL**

**CHAPTER 0465-03
OFFICE OF ADMINISTRATIVE APPEALS**

TABLE OF CONTENTS

0465-03-.01	Appeals Generally	0465-03-.12	File Reviews
0465-03-.02	Effective Date	0465-03-.13	Reopened Investigations
0465-03-.03	Legal Basis	0465-03-.14	Hearings Generally
0465-03-.04	Scope	0465-03-.15	Separations of Functions
0465-03-.05	Definitions	0465-03-.16	Filing of Documents
0465-03-.06	Right to Appeal; Contact Information of Appellant	0465-03-.17	Agency Record
0465-03-.07	Information Regarding Right to Appeal	0465-03-.18	Review of Initial Orders Issued by Administrative Judges
0465-03-.08	Time Limitations Applicable	0465-03-.19	Reconsideration of Initial or Final Order
0465-03-.09	Requests for File Reviews Challenging Substantiations	0465-03-.20	Stay of Effectiveness of Final Order
0465-03-.10	Requests for Hearings Challenging Referrals for Placement on the Abuse Registry and/or Class I Substantiations	0465-03-.21	Judicial Review of Final Order
0465-03-.11	Requests for Hearings Challenging Substantiation(s) for Which a Referral to the Abuse Registry Was Not Made	0465-03-.22	Clerical Mistakes

0465-03-.01 APPEALS GENERALLY.

- (1) When a person who has been substantiated at the Class I level for abuse, neglect, misappropriation of property of, or exploitation of, a vulnerable person (“A/N/E”); or who has three (3) or more Class II substantiations in separate investigations for incidents occurring or discovered within a twenty-four (24) month period, whether or not that substantiation(s) resulted in a referral for placement on the State’s registry of persons who have abused, neglected, exploited or misappropriated the property of vulnerable individuals (“Abuse Registry”), is dissatisfied with any action taken or intended to be taken by the Department of Intellectual and Developmental Disabilities (hereinafter referred to as “DIDD” or “department”), that person has the right to appeal to have the matter decided by a department official in a file review proceeding, or if a hearing is requested, by an administrative judge of the Administrative Procedures Division of the Office of Secretary of State.
- (2) Administrative actions taken by the department pursuant to judicial or administrative order or which are the subject of pending or concluded judicial or administrative proceedings shall not be subject to review by the processes described herein.

Authority: T.C.A. §§ 4-3-103; 4-3-2708; 4-5-101, et seq.; 4-5-217; 4-5-301, et seq.; 33-1-302; 33-1-303; 33-1-305; and 33-1-309. **Administrative History:** Original rule filed August 6, 2018; effective November 4, 2018.

0465-03-.02 EFFECTIVE DATE.

The effective date of the rules set forth in this chapter shall be November 4, 2018. Appeal rights provided for in these rules are available for those substantiations described herein resulting from incidents occurring or discovered on or after the effective date.

Authority: T.C.A. §§ 4-5-207 and 4-5-208. **Administrative History:** Original rule filed August 6, 2018; effective November 4, 2018.

0465-03-.03 LEGAL BASIS.

The commissioner of DIDD has the authority to make and enforce rules that are necessary for the lawful operation of the department's programs and services. The commissioner, and any employee of the department to whom such responsibility has been delegated, has the authority to review decisions made by DIDD employees, including decisions regarding substantiations of persons who were the subject of DIDD administrative investigations. The commissioner may also utilize administrative judges employed by the Secretary of State to conduct contested case hearings of departmental matters.

Authority: T.C.A. §§ 4-3-103; 4-3-2708; 4-5-101, et seq.; 4-5-208; 4-5-217; 4-5-301, et seq.; 33-1-302; 33-1-303; 33-1-305; and 33-1-309. **Administrative History:** Original rule filed August 6, 2018; effective November 4, 2018.

0465-03-.04 SCOPE.

- (1) Subject to any superseding federal or state law, these rules apply to and establish procedures for administrative appeals of Class I substantiations; three (3) or more Class II substantiations in separate investigations for incidents occurring or discovered within a twenty-four (24) month period; and referrals by DIDD of substantiated persons to the State's Abuse Registry. Contested case hearings of such matters, when requested, will be conducted by administrative judges of the Administrative Procedures Division of the Secretary of State and will be governed by the rules of the Tennessee Department of State, Administrative Procedures Division, Chapter 1360-04 "Uniform Rules of Procedure for Hearing Contested Cases Before State Administrative Agencies."
- (2) The Office of Administrative Appeals (OAA) is a unit of DIDD. The OAA is responsible for receiving appeals of those adverse administrative actions by the department which are defined below, conducting file reviews when requested, and arranging for, coordinating and prosecuting on behalf of DIDD contested case hearings before administrative judges of the Administrative Procedures Division (APD). Attorneys from DIDD's Office of General Counsel may also prosecute contested case hearings for the department. The APD is a division of the Secretary of State and is not a part of DIDD.
- (3) Nothing in these rules shall be construed to restrict the department from releasing any information about an alleged perpetrator of A/N/E to any state or federal law enforcement agency investigating a report of known or suspected abuse, neglect, exploitation of, misappropriation of money or property of, or crimes involving vulnerable persons; any state or federal District Attorney, Attorney General or U.S. Attorney, or his/her authorized assistants, of judicial districts or agencies involved in investigating or prosecuting crimes against vulnerable adults; any grand jury, criminal or civil court or administrative tribunal or body in response to a valid subpoena; any DIDD-contracted provider that is a full or part-time employer, or potential employer, of the alleged perpetrator or is responsible for providing care or services to victims or potential victims of the alleged perpetrator; or any state or federal agency or official investigating allegations of abuse, neglect, exploitation or misappropriation of money or property of vulnerable adults or the alleged perpetrator(s) thereof.

Authority: T.C.A. §§ 4-3-103; 4-3-2708; 4-5-101, et seq.; 4-5-301, et seq.; 33-1-302; 33-1-303; 33-1-305; 33-1-309; 33-3-105; 33-3-107; 33-3-108; 33-3-110; and Rules of the Department of State, Chapter 1360-04. **Administrative History:** Original rule filed August 6, 2018; effective November 4, 2018.

0465-03-.05 DEFINITIONS.

- (1) The following terms as used in these rules shall have the meanings described below:
 - (a) "Abuse" means the knowing infliction of injury, unreasonable confinement, intimidation or punishment with resulting physical harm, pain or mental anguish.

(Rule 0465-03-.05, continued)

- (b) “Abuse Registry” means the Registry maintained by the Department of Health which contains the names of persons who have abused, neglected, exploited or misappropriated property of a vulnerable person as defined in T.C.A. § 68-11-1002(8). The registry is established by T.C.A. §§ 68-11-1001, et seq.
- (c) “Abuse Registry Review Committee” or “ARRC” means the DIDD committee that reviews the cases of persons who have been substantiated at the Class I level for A/N/E, or persons who have three (3) or more Class II substantiations for A/N/E in separate investigations for incidents occurring or discovered within a twenty-four (24) month period, to make decisions regarding referrals for placement on the Abuse Registry.
- (d) “Administrative Judge” means an employee of the Administrative Procedures Division of the Office of the Secretary of State who conducts contested case hearings.
- (e) “Administrative Procedures Division” or “APD” means the division of the Secretary of State which is responsible for conducting contested case hearings.
- (f) “Adverse Administrative Action” means one or more of the following determinations by the department affecting an individual:
 - 1. Class I substantiation of a person for allegations of A/N/E following an administrative investigation conducted by DIDD and proposed placement of the perpetrator’s name on DIDD’s Substantiated Investigations Records Inquiry (SIRI) database;
 - 2. Three (3) or more Class II substantiations of a person in separate investigations for incidents occurring or discovered within a twenty-four (24) month period of an individual for allegations of A/N/E following administrative investigations conducted by DIDD and proposed placement of the perpetrator’s name on DIDD’s SIRI database; and
 - 3. Proposed placement of an individual on the State’s Abuse Registry, by decision of DIDD’s Abuse Registry Review Committee, for either of the above.
- (g) “A/N/E” means abuse, neglect, misappropriation of money or property of, or exploitation of, a person supported by DIDD.
- (h) “Appeal” means the process by which an appellant requests review of one or more adverse administrative actions, as defined herein, in accordance with procedures set forth in these rules. Except as otherwise specified herein, an appeal may consist of a file review or a contested case hearing or both. An Initial Order issued by an administrative judge of the APD following a contested case hearing may also be appealed to the Commissioner’s Designee pursuant to T.C.A. § 4-5-315 and/or to the appropriate Chancery Court pursuant to T.C.A. § 4-5-322.
- (i) “Appellant” means a person who has filed an appeal challenging an adverse administrative action, as defined herein, against that person. Under the circumstances described in Rules 0465-03-01-.12(11) and 0465-03-01-.18(1), the department may also be an appellant.
- (j) “Class I” and “Class II” are categories utilized by DIDD investigators in classifying a substantiation, with Class I being the more egregious.

(Rule 0465-03-.05, continued)

1. Class I means the wrongful conduct affecting the person supported constituted abuse, neglect, exploitation, or misappropriation of money or property, and resulted in one or more of the following consequences to the person supported: death, serious injury or physical harm; physical or sexual abuse; significant pain, intimidation or mental anguish; probable risk of serious harm; loss of funds or property of greater than \$500 in value or prescription controlled medications regardless of value; or, through supervision neglect, harming a citizen in the community or engaging in criminal acts resulting in arrest and confinement. Wrongful conduct in this category is of a nature serious enough to call into question whether the offender should be entrusted with the care of vulnerable persons.
 2. Class II means the wrongful conduct affecting the person supported constituted abuse, neglect, exploitation, or misappropriation of money or property, but resulted in minimal or no physical harm or injury, pain or mental anguish; minimal risk of serious harm; loss of funds or property of up to \$500 in value; or violations of plans of care with minimal or no adverse consequences. Wrongful conduct in this category is of a nature that disciplinary action and/or additional training may reasonably be deemed sufficient to address.
- (k) “Commissioner” means the commissioner of the Tennessee Department of Intellectual and Developmental Disabilities.
- (l) “Commissioner’s Designee” means a person authorized by the commissioner to review Initial Orders issued by administrative judges of the APD and to enter Final Orders pursuant to T.C.A. § 4-5-315. Reviewing officials of the OAA are also designees of the commissioner.
- (m) “Contested Case” or “Contested Case Hearing” means an administrative proceeding in which the legal rights, duties or privileges of a party are required by any statute or constitutional provision to be determined after an opportunity for a hearing. The department may commence a contested case at any time with respect to a matter within its jurisdiction. Contested case hearings are conducted by administrative judges of the APD in accordance with the APD’s rules and procedures.
- (n) “Department” or “DIDD” means the Tennessee Department of Intellectual and Developmental Disabilities.
- (o) “Exploitation” means actions including but not limited to the deliberate misplacement, misappropriation or wrongful temporary or permanent use of belongings or money with or without the consent of a person using services. The illegal or improper use of a person’s resources or status for another’s benefit or advantage is considered exploitation.
- (p) “File Review” is a proceeding requested by an appellant and conducted by DIDD’s Office of Administrative Appeals (OAA) in which the matter is decided by a reviewing official based on the department’s records or file material and any written submissions by the appellant. The reviewing official may uphold, overturn, or modify the adverse administrative action.
- (q) “Final Order” means an Initial Order of an administrative judge of the APD which has become a Final Order, or an order issued by the Commissioner’s Designee after review of an Initial Order, concerning a contested case. An Initial Order becomes a Final Order in accordance with T.C.A. § 4-5-314.

(Rule 0465-03-.05, continued)

- (r) "Hearing" means a contested case proceeding before an administrative judge of the APD.
- (s) "Initial Order" means the written decision of the administrative judge issued after a contested case hearing.
- (t) "Misappropriation of property" means the deliberate misplacement, exploitation, or wrongful, temporary or permanent use of belongings or money without consent.
- (u) "Neglect" means failure to provide goods or services necessary to avoid physical harm, mental anguish, or mental illness, which results in injury or probable risk of serious harm.
- (v) "Party" means each person or entity participating in an appeal.
- (w) "Reviewing official" means an employee of the OAA who is designated by the commissioner to conduct file reviews.
- (x) "Substantiated" means that following a DIDD administrative investigation, a person has been determined, by a preponderance of the evidence, to have committed an act(s) against a person supported by DIDD that meets the definitions of abuse, neglect, misappropriation of property or exploitation.
- (y) "Substantiated Investigation Records Inquiry" or "SIRI" means a database maintained by DIDD containing information regarding substantiations of perpetrators of A/N/E.

Authority: T.C.A. §§ 4-3-103; 4-3-2708; 4-5-101, et seq.; 4-5-301, et seq.; 4-5-314; 4-5-315; 4-5-322; 33-1-302; 33-1-303; 33-1-305; 33-1-309; 33-2-402; and 68-11-1001, et seq. **Administrative History:** Original rule filed August 6, 2018; effective November 4, 2018.

0465-03-.06 RIGHT TO APPEAL; CONTACT INFORMATION OF APPELLANT.

- (1) An appellant may appeal an adverse administrative action, as defined in Rule 0465-03-01-.05(f), by following the procedures set forth in these rules.
- (2) It is the responsibility of the appellant to provide the Office of Administrative Appeals with his or her current mailing address and other contact information and to keep that information current at all times.

Authority: T.C.A. §§ 4-3-103; 4-3-2708; 4-5-101, et seq.; 4-5-301, et seq.; 33-1-302; 33-1-303; 33-1-305; and 33-1-309. **Administrative History:** Original rule filed August 6, 2018; effective November 4, 2018.

0465-03-.07 INFORMATION REGARDING RIGHT TO APPEAL.

- (1) Every person against whom an adverse administrative action, as defined in Rule 0465-03-01-.05 (f), has been taken by the department shall be provided a written notice, sent to the last known address of the recipient, which contains the following information:
 - (a) Notice of the department's adverse administrative action and any intended action as a consequence thereof;
 - (b) A notice of the right to appeal;
 - (c) A description of the appeal options available and the steps by which an appeal can be perfected; and

(Rule 0465-03-.07, continued)

- (d) A statement of the deadline(s) for the taking of appropriate steps to perfect the appeal and that failure to timely request an appeal will result in a waiver of appeal rights.
- (2) For a Class I substantiation or three (3) or more Class II substantiations in separate investigations for incidents occurring or discovered within a twenty-four (24) month period, the items listed in subsection (1) above will be included in a letter or notice issued by the department within ten (10) business days following the Class I substantiation, or, if applicable, within ten (10) business days after the determination by DIDD that the third Class II substantiation has occurred.
- (3) For a referral for placement on the Abuse Registry, the items listed in subsection (1) above will be included in a letter or notice issued by the department within ten (10) business days following the meeting of the Abuse Registry Review Committee at which the substantiated perpetrator's case was considered.
- (4) For a Class I substantiation or three (3) or more Class II substantiations in separate investigations for incidents occurring or discovered within a twenty-four (24) month period for which a referral for placement on the Abuse Registry was not made, the items listed in subsection (1) above will be included in a letter or notice issued by the department within ten (10) business days following the meeting of the Abuse Registry Review Committee at which the substantiated perpetrator's case was considered.
- (5) The notifications required by subsections (2), (3) and (4) of this rule shall be sent by certified and regular mail to the last known address of the recipient. The notifications will be accompanied by an appropriate response or election form for use by the recipient in responding to the department and exercising or declining his/her rights to appeal.

Authority: T.C.A. §§ 4-3-103; 4-3-2708; 4-5-101, et seq.; 4-5-301, et seq.; 33-1-302; 33-1-303; 33-1-305; and 33-1-309. **Administrative History:** Original rule filed August 6, 2018; effective November 4, 2018.

0465-03-.08 TIME LIMITATIONS APPLICABLE.

- (1) Requests for appeals will be accepted only if submitted in writing, in compliance with Rule 0465-03-01-.16, and within the time limits set forth below.
 - (a) For a request for a file review challenging a Class I substantiation or three (3) or more Class II substantiations in separate investigations for incidents occurring or discovered within a twenty-four (24) month period: within fifteen (15) calendar days following the date of the notice containing the information required by Rule 0465-03-01-.07(2).
 - (b) For a request for a hearing challenging a referral for placement on the Abuse Registry: within sixty (60) calendar days following the date of the notice containing the information required by Rule 0465-03-01-.07(3).
 - (c) For a request for a hearing challenging a Class I substantiation or three (3) or more Class II substantiations in separate investigations for incidents occurring or discovered within a twenty-four (24) month period: within sixty (60) calendar days following the date of the notice containing the information required by Rule 0465-03-01-.07(4).
- (2) In computing any period of time prescribed or allowed by statute, rule, or order, the time within which any act provided by law is to be done shall be computed by excluding the first day and including the last, unless the last day is a Saturday, a Sunday, or state or federal holiday, in which event the period runs until the end of the next day which is neither a Saturday, a Sunday nor a holiday.

Authority: T.C.A. §§ 4-3-103; 4-3-2708; 4-5-101, et seq.; 4-5-301, et seq.; 33-1-302; 33-1-303; 33-1-305;

(Rule 0465-03-.08, continued)

and 33-1-309. **Administrative History:** Original rule filed August 6, 2018; effective November 4, 2018.

0465-03-.09 REQUESTS FOR FILE REVIEWS CHALLENGING SUBSTANTIATIONS.

- (1) An appellant requesting a file review challenging a Class I substantiation or three (3) or more Class II substantiations in separate investigations for incidents occurring or discovered within a twenty-four (24) month period and who has received a notice of the type specified in Rule 0465-03-01-.07(2) may request a file review of the substantiation(s).
- (2) A person who elects to take no action, or who fails to respond timely to the notice, waives the right to a file review but does not waive the right to request a hearing challenging the substantiation(s) and/or referral by the ARRC for placement of the person's name on the Abuse Registry after the ARRC meeting at which that substantiation(s) was considered.
- (3) An appellant requesting a file review may submit any documentation or other evidence that he/she wishes to have considered by the reviewing official. Such material should be submitted no later than fifteen (15) calendar days following the date of the notice containing the information required by Rule 0465-03-01-.07(2), unless a longer period is requested by the appellant prior to the expiration of the deadline and is approved by the reviewing official.

Authority: T.C.A. §§ 4-3-103; 4-3-2708; 4-5-101, et seq.; 4-5-301, et seq.; 33-1-302; 33-1-303; 33-1-305; and 33-1-309. **Administrative History:** Original rule filed August 6, 2018; effective November 4, 2018.

0465-03-.10 REQUESTS FOR HEARINGS CHALLENGING REFERRALS FOR PLACEMENT ON THE ABUSE REGISTRY AND/OR SUBSTANTIATIONS.

- (1) A person who has received a notice of the type specified in Rule 0465-03-01-.07 (3) may:
 - (a) Request a hearing challenging only the referral for placement on the Abuse Registry, in which case the substantiation is not at issue, and the person's name will be placed on the SIRI database for the underlying substantiation(s); or
 - (b) Request a hearing challenging both the referral for placement on the Abuse Registry and the substantiation(s) on which the referral was based.
- (2) A person who elects to take no action, or who fails to respond timely to the notice, waives all appeal rights. The person's name will be placed on the Abuse Registry as well as on the SIRI database for the underlying substantiation(s).

Authority: T.C.A. §§ 4-3-103; 4-3-2708; 4-5-101, et seq.; 4-5-301, et seq.; 33-1-302; 33-1-303; 33-1-305; 33-1-309; and 68-11-1001, et seq. **Administrative History:** Original rule filed August 6, 2018; effective November 4, 2018.

0465-03-.11 REQUESTS FOR HEARINGS CHALLENGING SUBSTANTIATION(S) FOR WHICH A REFERRAL TO THE ABUSE REGISTRY WAS NOT MADE.

- (1) A person who has received a notice of the type specified in Rule 0465-03-01-.07(4) may request a hearing challenging the substantiation.
- (2) A person who elects to take no action, or who fails to respond timely to the notice, waives all appeal rights. The person's name will be placed on the SIRI database.

Authority: T.C.A. §§ 4-3-103; 4-3-2708; 4-5-101, et seq.; 4-5-301, et seq.; 33-1-302; 33-1-303; 33-1-305; and 33-1-309. **Administrative History:** Original rule filed August 6, 2018; effective November 4, 2018.

0465-03-.12 FILE REVIEWS.

- (1) A file review is an informal proceeding in which the reviewing official reviews the department's files, which may include the investigation report and file and any submissions by the appellant, and then makes a determination, reflected in a decision letter, whether to uphold, modify or overturn the adverse administrative action.
- (2) Submissions by the appellant relating to file reviews of substantiations shall be made available by the OAA to DIDD's Director of Investigations or designee within three (3) business days of receipt thereof. The Director of Investigations or designee shall, within three (3) business days of receipt of these documents, notify the OAA in writing if the investigation(s) will be reopened with respect to the appellant's substantiation(s). If so, Rule 0465-03-01-.13 will be applicable.
- (3) Formal pleadings or affidavits are not required, but all written submissions shall be filed and become part of the record of the proceeding.
- (4) Discovery procedures do not apply to file reviews.
- (5) The party requesting the file review shall be designated as the "Appellant," and DIDD shall be designated as the "Department" or "DIDD."
- (6) In consideration of materials reviewed, the reviewing official shall not be constrained by rules of evidence but shall give the items considered the weight that he or she deems appropriate.
- (7) The reviewing official will consider the information available and make a determination whether, based on a preponderance of the evidence, the adverse administrative action taken by the department was or was not justified in light of applicable statutes and other authorities, including but not limited to other rules and policies.
- (8) The decision letter will be issued by the reviewing official not later than thirty (30) calendar days following receipt of the appellant's request for a file review unless circumstances exist which make a delay unavoidable.
- (9) The decision letter will be mailed to the appellant and distributed to DIDD personnel as appropriate.
- (10) If the decision of the reviewing official is to modify or overturn the substantiation(s), an addendum will be issued by the investigations unit in accordance with the decision letter or, if a hearing is conducted, with the Initial or Final Order.
- (11) Following any file review authorized by these rules in which the other party has not requested a hearing, DIDD may, if dissatisfied with the decision of the reviewing official, within fifteen (15) calendar days following the expiration of the other party's right to request a hearing, file with the OAA and serve on the other party a notice of intention to commence a contested case hearing challenging that decision. Thereafter, DIDD must file a notice of charges with the APD within thirty (30) calendar days of the date of said notice.

Authority: T.C.A. §§ 4-3-103; 4-3-2708; 4-5-101, et seq.; 33-1-302; 33-1-303; 33-1-305; and 33-1-309.
Administrative History: Original rule filed August 6, 2018; effective November 4, 2018.

0465-03-.13 REOPENED INVESTIGATIONS.

- (1) If, as a result of documents or other evidence submitted by an appellant in support of his/her request for a file review of a substantiation(s), or if for any other reason an investigation is reopened under circumstances which could affect the substantiation(s) of an appellant with a

(Rule 0465-03-.13, continued)

pending file review request, the appellant will be notified in writing that the file review is suspended pending outcome of the additional investigation.

- (2) If the pending file review request was for a Class I substantiation, upon the closing of the additional investigation, the appellant will be notified in writing of the outcome as it pertains to him or her. If the Class I substantiation was overturned, and there was no other Class I substantiation against the appellant resulting from that investigation, he/she will be notified that the file review proceeding is closed. If the appellant remains substantiated at the Class I level following the additional investigation, he/she will be notified in writing that the file review will be resumed. The thirty (30) day period specified in Rule 0465-03-.12(8) for completion of the file review will commence following the date of the notification specified in this paragraph.
- (3) If the pending file review request was for three (3) or more Class II substantiations in separate investigations for incidents occurring or discovered within a twenty-four (24) month period, upon the closing of the additional investigation, the appellant will be notified in writing of the outcome as it pertains to him or her. If the Class II substantiation was overturned, and there was no other Class II substantiation against the appellant resulting from that investigation, he/she will be notified that the file review proceeding is closed. If the appellant remains substantiated at the Class II level following the additional investigation, he/she will be notified in writing that the file review will be resumed. The thirty (30) day period specified in Rule 0465-03-.12(8) for completion of the file review will commence following the date of the notification specified in this paragraph.

Authority: T.C.A. §§ 4-3-103; 4-3-2708; 4-5-101, et seq.; 33-1-302; 33-1-303; 33-1-305; and 33-1-309.
Administrative History: Original rule filed August 6, 2018; effective November 4, 2018.

0465-03-.14 HEARINGS GENERALLY.

- (1) A hearing is a contested case proceeding conducted by administrative judges of the APD in accordance with the APD's rules and procedures. Parties should refer to Tennessee Department of State, Administrative Procedures Division Chapter 1360-04 "Uniform Rules of Procedure for Hearing Contested Cases Before State Administrative Agencies."
- (2) Initial Orders issued by administrative judges, stays of effectiveness of Initial Orders, or petitions for reconsideration of Initial Orders are governed by T.C.A. §§ 4-5-314, 4-5-316 and 4-5-317, respectively.

Authority: T.C.A. §§ 4-3-103; 4-3-2708; 4-5-101, et seq.; 4-5-301, et seq.; 33-1-302; 33-1-303; 33-1-305; and 33-1-309. **Administrative History:** Original rule filed August 6, 2018; effective November 4, 2018.

0465-03-.15 SEPARATION OF FUNCTIONS.

A person who has served as, or is subject to the authority, direction, or discretion of one who has served as, an investigator, or who has otherwise participated in a determination made in an administrative investigation or related proceeding which is the subject of an appeal, or who has had any direct or indirect involvement in the adverse administrative action under consideration prior to the filing of the appeal, may not serve as a reviewing official, attorney representative or Commissioner's Designee in the same or related proceeding. No reviewing official may serve as an attorney representative in a hearing if he or she has previously conducted a file review in the same or related proceeding.

Authority: T.C.A. §§ 4-3-103; 4-3-2708; 4-5-101, et seq.; 33-1-302; 33-1-303; 33-1-305; and 33-1-309.
Administrative History: Original rule filed August 6, 2018; effective November 4, 2018.

0465-03-.16 FILING OF DOCUMENTS.

- (1) To be considered timely filed, all documents required to be filed by a date certain with the OAA shall be filed by delivering such materials in person or in any other manner, including mail or hand delivery, fax or email, provided they are actually received by the OAA during normal business hours and within the required time period. For purposes of these rules, normal business hours are between 8:00 a.m. and 4:30 p.m. C.S.T. Monday through Friday, excluding state and federal holidays.
- (2) All documents required to be filed with the OAA shall be stamped with the date of receipt; provided, however, that if a document is hand delivered or sent by fax or email after hours or on a weekend or holiday, it shall be deemed received on the date of the next business day and will be date-stamped with that date. A copy of any document sent by fax or email for filing will be deemed an original document and maintained in the file.
- (3) All requests for appeals received by the OAA shall be acknowledged in writing. The acknowledgement shall be sent, within three (3) business days of receipt of the request, by mail or by email to the address(es) provided by the appellant.
- (4) For documents required to be filed with the APD in a contested case, the APD's rules and procedures are applicable.

Authority: T.C.A. §§ 4-3-103; 4-3-2708; 4-5-101, et seq.; 4-5-301, et seq.; 33-1-302; 33-1-303; 33-1-305; and 33-1-309. **Administrative History:** Original rule filed August 6, 2018; effective November 4, 2018.

0465-03-.17 AGENCY RECORD.

- (1) The department's official record of each appeal shall be maintained for not less than five (5) years from the date a decision letter is issued in a file review, an Initial Order becomes a Final Order, or a Final Order is issued, whichever is later.
- (2) The record shall include paper or electronic copies of:
 - (a) All documents submitted by the appellant in a file review;
 - (b) Correspondence between the reviewing official and the parties, including the decision letter issued upon completion of a file review;
 - (c) All pleadings, orders, transcribed testimony, recordings, or other record of oral proceedings, and correspondence filed, issued, or generated in a contested case proceeding; and
 - (d) All pleadings, orders, and correspondence filed, issued, or generated in a proceeding before the Commissioner's Designee.
- (3) Except to the extent otherwise provided by law, the agency record, including the record of oral proceedings, shall constitute the exclusive basis for agency action in contested cases, departmental review, and judicial review thereof.

Authority: T.C.A. §§ 4-3-103; 4-3-2708; 4-5-101, et seq.; 10-7-501, et seq.; 33-1-302; 33-1-303; 33-1-305; and 33-1-309. **Administrative History:** Original rule filed August 6, 2018; effective November 4, 2018.

0465-03-.18 REVIEW OF INITIAL ORDERS ISSUED BY ADMINISTRATIVE JUDGES.

- (1) Except in circumstances described in T.C.A. § 4-5-315(a)(1) and (2), the department may review, and upon petition for appeal submitted to the OAA within fifteen (15) calendar days after entry of an Initial Order by an administrative judge, shall review the Initial Order. If the department on its own motion decides to review an Initial Order, it shall file its petition with the OAA and give written notice of its intention to review the Initial Order within fifteen (15) calendar days after its entry. Reviews of Initial Orders shall be conducted by the Commissioner's Designee.
- (2) Pursuant to T.C.A. § 4-5-315(b), the fifteen (15) calendar day periods referred to in the preceding paragraph shall be tolled by the submission of a timely petition for reconsideration of the Initial Order pursuant to T.C.A. § 4-5-317 and a new fifteen (15) calendar day period shall start to run upon disposition of the petition for reconsideration. If an Initial Order is subject both to a timely petition for reconsideration and to a petition for appeal or to review by the agency on its own motion, the petition for reconsideration shall be disposed of first, unless the agency determines that action on the petition for reconsideration has been unreasonably delayed.
- (3) The petition for appeal shall state the grounds upon which the appeal is based. If the department on its own motion gives notice of its intent to review an Initial Order, it shall identify the issues that it intends to review.
- (4) The Commissioner's Designee shall exercise all the decision-making power that the agency would have had to render a final order had the agency presided over the hearing, except to the extent that the issues subject to review are limited by rule or statute or by the agency upon notice to all parties.
- (5) Each party shall be afforded the opportunity to present briefs in accordance with a schedule established by the Commissioner's Designee, who may, but is not required to permit oral argument.
- (6) The department may cause a transcript to be prepared at its expense of such portions of the proceeding under review as are deemed necessary.
- (7) The Commissioner's Designee may render a Final Order disposing of the proceeding or may remand the matter for further proceeding with instructions to the administrative judge who rendered the Initial Order. Upon remanding a matter, the Commissioner's Designee may order such temporary relief as is authorized and appropriate.
- (8) A Final Order or an order remanding the matter for further proceedings shall be rendered and entered in writing within sixty (60) days after receipt of briefs and oral argument, if permitted, unless that period is waived or extended with the written consent of all parties or for good cause shown. The Final Order or an order remanding the matter for further proceedings shall be delivered to each party and to the administrative judge who conducted the contested case.
- (9) A Final Order, or an order remanding the matter for further proceedings, shall identify any difference between such order and the Initial Order, and shall include, or incorporate by express reference to the Initial Order, all requirements of T.C.A. § 4-5-314(c).

Authority: T.C.A. §§ 4-3-103; 4-3-2708; 4-5-101, et seq.; 4-5-315; 4-5-317; 33-1-302; 33-1-303; 33-1-305; and 33-1-309. **Administrative History:** Original rule filed August 6, 2018; effective November 4, 2018.

0465-03-.19 RECONSIDERATION OF INITIAL OR FINAL ORDER.

- (1) Any party, within fifteen (15) calendar days after entry of an Initial or Final Order may file a petition for reconsideration, stating the specific grounds upon which relief is requested. A petition for reconsideration of an Initial Order shall be filed with the APD. A petition for reconsideration of a Final Order shall be filed with the OAA.
- (2) The petition for reconsideration shall be disposed of by the same person who rendered the Initial or Final Order, if he or she is available.
- (3) The person who rendered the Initial or Final Order that is the subject of the petition shall, within twenty (20) calendar days of receiving the petition, enter a written order either denying the petition, granting the petition and setting the matter for further proceedings, or granting the petition and issuing a new order in accordance with T.C.A. § 4-5-314.
- (4) If no action has been taken on the petition within twenty (20) calendar days of filing, the petition shall be deemed to have been denied.
- (5) An order granting the petition and setting the matter for further proceedings shall state the extent and scope of the proceedings, which shall be limited to argument upon the existing record. No new evidence shall be introduced unless the party proposing such evidence shows good cause for the failure to introduce the evidence in the original proceeding.
- (6) The sixty (60) calendar day period for a party to file a petition for judicial review of a Final Order pursuant to T.C.A. § 4-5-322 shall be tolled if a petition for reconsideration is granted, and a new sixty (60) calendar day period shall begin to run upon disposition of the petition for reconsideration by issuance of a Final Order by the Commissioner's Designee.

Authority: T.C.A. §§ 4-3-103; 4-3-2708; 4-5-101, et seq.; 4-5-314; 4-5-317; 4-5-322; 33-1-302; 33-1-303; 33-1-305; and 33-1-309. **Administrative History:** Original rule filed August 6, 2018; effective November 4, 2018.

0465-03-.20 STAY OF EFFECTIVENESS OF FINAL ORDER.

A party may file with the OAA a petition for stay of effectiveness of a Final Order issued by the Commissioner's Designee within seven (7) calendar days after its entry, unless otherwise provided by statute or stated in the Initial or Final Order. The department may take action on the petition for stay, either before or after the effective date of the Initial or Final Order.

Authority: T.C.A. §§ 4-3-103; 4-3-2708; 4-5-101, et seq.; 4-5-316; 33-1-302; 33-1-303; 33-1-305; and 33-1-309. **Administrative History:** Original rule filed August 6, 2018; effective November 4, 2018.

0465-03-.21 JUDICIAL REVIEW OF FINAL ORDER.

A person who is aggrieved by a final decision by the department in a contested case is entitled to judicial review by the appropriate Chancery Court by filing a petition with that court within sixty (60) calendar days after the entry of a Final Order by the department. Procedures for judicial review are governed by T.C.A. § 4-5-322.

Authority: T.C.A. §§ 4-3-103; 4-3-2708; 4-5-101, et seq.; 4-5-322; 33-1-302; 33-1-303; 33-1-305; and 33-1-309. **Administrative History:** Original rule filed August 6, 2018; effective November 4, 2018.

0465-03-.22 CLERICAL MISTAKES.

- (1) Prior to any appeal being perfected by either party to the Commissioner's Designee or to the Chancery Court, clerical mistakes in orders or other parts of the record, and errors arising

(Rule 0465-03-.22, continued)

from oversight or omissions may be corrected at any time on motion of any party and after such notice, if any, as the reviewing official or administrative judge may require.

- (2) The entry of a corrected order will not affect the dates of the original appeal time period.

Authority: T.C.A. §§ 4-3-103; 4-3-2708; 4-5-101, et seq.; 33-1-302; 33-1-303; 33-1-305; and 33-1-309.

Administrative History: Original rule filed August 6, 2018; effective November 4, 2018.