

(Rule 1720-01-05-.01, continued)

2. In all other situations, by making a hand delivery or sending documents by U.S. Mail or other national courier service to the party's last known physical address, sending a facsimile transmission to the last known facsimile number, and/or sending an email to the party's last known email address. The contact information on file with the University is presumed to be correct for students and employees and for former students and former employees who ceased to have active student or employee status within the eighteen months (18) prior to commencement of the contested case.
- (3) Agency Head - As used in these procedures, the term "Agency Head" means: (a) the Chancellor or other head of a campus or institute out of which a contested case arises; and (b) the President or the President's designee when the contested case arises out of the system administration or when the Chancellor or other head of a campus or institute is not available to serve as Agency Head due to a conflict of interest, recusal, disqualification, or other reason.
- (4) Contested cases may be conducted by an administrative judge from the Administrative Procedures Division of the Office of the Secretary of State, by an administrative judge appointed by the Agency Head or the Agency Head's designee from among the University faculty or staff, or any other person authorized under state law to conduct contested cases. The person who conducts a contested case is referred to in these procedures as the "administrative judge," and for purposes of these procedures, the term "administrative judge" shall include a "hearing officer" as defined by the UAPA.
 - (a) Pre-hearing Proceedings - An opportunity shall be afforded to all parties to respond in person or by attorney, including appropriate responsive pleadings, and present evidence and argument on all issues involved.
 - (b) The administrative judge assigned to hear the case may, upon his/her own motion or motion of a party, direct the parties and/or the attorneys for the parties to appear for a conference at which the following may be discussed:
 1. The simplification of issues;
 2. The necessity or desirability of amendments to the pleadings;
 3. The possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof;
 4. The time within which discovery shall be completed;
 5. The limitation of the number of expert witnesses;
 6. The consolidation for hearing of actions involving common questions of law or fact;
 7. The date for exchanging witness lists and exhibit lists, which shall be exchanged no later than five (5) business days in advance of the hearing; and
 8. Such other matters as may aid in the disposition of the action.

Following such a conference, the administrative judge shall issue an order that includes, without limitation, a recitation of the action taken at the conference, the amendments allowed to the pleadings, the time within which discovery shall be completed, and the agreements made by the parties as to any of the matters

(Rule 1720-01-05-.01, continued)

considered, and that limits the issues for hearing to those not disposed of by admissions or agreements of the parties, and such order when entered shall control the subsequent course of the action, unless modified at the hearing to prevent manifest injustice.

(c) Substitution of Agency Head or Administrative Judge Due to Recusal, Disqualification, or Other Reasons.

1. An Agency Head or administrative judge shall not serve in such capacity if he or she is biased and/or has a conflict of interest and may recuse himself or herself for any reason.
2. An Agency Head or administrative judge shall be subject to disqualification for bias, prejudice, interest, or any other cause provided in Tennessee Code Annotated §§ 4-5-101 *et seq.* or for any cause for which a judge may be disqualified.
3. Any party may request the disqualification of an Agency Head or administrative judge promptly after notice that the individual will serve or, if later, promptly upon discovering facts establishing grounds for disqualification.
4. The individual whose disqualification is requested shall determine whether to grant the request, stating facts and reasons for the determination.
5. If a substitute is required for an individual who becomes unavailable as a result of recusal, disqualification, or any other reason, the substitute shall be appointed, unless otherwise provided by law, by:
 - (i) The Agency Head or designee, if the unavailable individual is an administrative judge;
 - (ii) The President or designee, if the unavailable individual is a Chancellor or other chief executive officer of a campus or institute; or
 - (iii) The Vice Chair of The University of Tennessee's Board of Trustees or designee, if the unavailable individual is the President.

(d) In any situation not specifically addressed by this Chapter, reference may be made to the Tennessee Rules of Civil Procedure for guidance as to the proper procedure to follow where appropriate and to whatever extent will best serve the interests of justice and the speedy and inexpensive determination of the matter at hand.

(5) Default.

- (a) The failure of a party to attend or participate, either personally or through counsel, in a prehearing conference, hearing or other stage of contested case proceedings after notice thereof is cause for holding such party in default. Failure to comply with any lawful order of the administrative judge, necessary to maintain the orderly conduct of the hearing, may be deemed a failure to participate in a stage of a contested case and thereby be cause for a holding of default.
- (b) After entering into the record evidence of notice to an absent party, a motion may be made to hold the absent party in default and to adjourn the proceedings or continue in the party's absence.

(Rule 1720-01-05-.01, continued)

- (c) The administrative judge shall not grant a default if notice is inadequate.
 - (d) If the administrative judge grants a motion for default, the grounds shall be stated and shall thereafter be set forth in a written order. If a default is granted, the proceedings may then be adjourned or conducted without the participation of the absent party.
 - (e) The administrative judge shall provide all parties notice of entry of default for failure to appear. The defaulting party, no later than fifteen (15) days after notice of default, may file a motion for reconsideration, requesting that the default be set aside for good cause shown and stating the grounds relied upon. The administrative judge may make any order in regard to such motion as is deemed appropriate, pursuant to reconsideration.
- (6) Record of Contested Case - The record in a contested case shall include:
- (a) All applications, pleadings, motions, intermediate rulings, and exhibits and appendices thereto;
 - (b) Evidence received or considered, stipulations, and admissions;
 - (c) A statement of matters officially noticed;
 - (d) Questions and offers of proof, objections, and rulings thereon;
 - (e) Any proposed findings or decisions and exceptions;
 - (f) Any decision, opinion, or report by the Agency Head or administrative judge; and
 - (g) All evidence submitted to the administrative judge or the Agency Head in connection with the case. A record (which may consist of a recording) shall be made of all oral proceedings. Such record or any part thereof shall be transcribed on request of any party, at his/her expense, or may be transcribed by the University at its expense. If the University elects to transcribe the proceedings, any party shall be provided copies of the transcript upon payment to the University of a reasonable compensatory fee. Findings of fact shall be based exclusively on the evidence and on matters judicially noticed.
- (7) Filing and Service.
- (a) Submission/Filing.
 - 1. All pleadings, motions, and other papers submitted to the Agency Head or administrative judge may be filed by hand delivery, by U.S. Mail, by email transmission, by facsimile transmission, or by any other method authorized by the Agency Head or administrative judge. Any party who submits any paper to the Agency Head or administrative judge must serve the paper on all other parties in the same manner if possible, and if not, in a manner contemplated to provide notice to all other parties on the same date the paper is received by the Agency Head or administrative judge.
 - 2. If any paper is submitted or filed by any form of electronic transmission, it must be sent to the administrative judge at or before 11:59 p.m. local time to be considered filed upon that date. If such electronic transmission is sent after 11:59 p.m. local time, it will be considered submitted or filed the next business day.
 - (b) Service.

(Rule 1720-01-05-.01, continued)

1. Parties are required to serve on all other parties any pleading, motion, or other paper submitted to the Agency Head or administrative judge, as well as any other paper required to be served on a party by the Tennessee Rules of Civil Procedure. Such service may be completed by hand delivery to a party or its counsel, by U.S. Mail, by email transmission, by facsimile transmission, or by any other method authorized by the Agency Head or administrative judge.
2. Any paper submitted to or filed with the Agency Head or administrative judge must be served on all other parties, or their counsel/representative, and must bear a certificate of service as required by the Tennessee Rules of Civil Procedure.
3. If any paper is served by any form of electronic transmission, it must be sent at or before 11:59 p.m. local time to be considered served upon that date. If such electronic transmission is sent after 11:59 p.m. local time, it will be considered served the next business day.
4. Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon such party and the notice or paper is served upon such party by mail, three days shall be added to the prescribed period. No time is added to the prescribed period if the notice or paper is served via electronic transmission in compliance with the preceding paragraph. This Section .01(7)(b)4. does not apply to an appeal from an initial order under Section .01(16) or a request for reconsideration under Section .01(17) or a petition for judicial review under Section .01(19).

(8) Motions.

- (a) Unless contrary to any express provision of this Chapter any party may file any motion allowed by the Tennessee Rules of Civil Procedure. Unless this Chapter specifically governs the filing, procedure, or resolution of any motion, reference may be made to the Tennessee Rules of Civil Procedure for guidance as to the proper procedure to follow, where appropriate and to whatever extent will best serve the interests of justice and the speedy and inexpensive determination of the matter at hand.
- (b) Briefing of any motion shall be as follows: the movant files the initial motion and/or brief, and the nonmovant may file a response. If the nonmovant files a response in opposition to all or part of the motion, the movant may file a reply that addresses only the issues raised in the nonmovant's response; no new issues may be raised by reply. No further briefing shall be allowed unless permitted by the administrative judge. If a dispute arises as to the scheduling of any briefing, the administrative judge may establish a briefing schedule.

(9) Rules of Evidence - The following rules of evidence shall govern the conduct of a hearing:

- (a) The administrative judge shall admit and give probative effect to evidence admissible in a court and when necessary to ascertain facts not reasonably susceptible to proof under the rules of court; evidence not admissible thereunder may be admitted if it is of a type commonly relied upon by reasonably prudent people in the conduct of their affairs. The administrative judge shall give effect to the rules of privilege recognized by law and shall exclude evidence that is irrelevant, immaterial, or unduly repetitious;
- (b) Affidavits may be utilized as follows:

(Rule 1720-01-05-.01, continued)

1. At any time not less than ten (10) days prior to a hearing or a continued hearing, any party shall serve all parties with a copy of any affidavit that it proposes to introduce in evidence in accordance with subsection (b)3. Unless another party, within seven (7) days after service of the affidavit, serves to the proponent a request to cross-examine an affiant, the right to cross-examination such affiant is waived and the affidavit, if introduced in evidence, shall be given the same effect as if the affiant had testified orally. If an opportunity to cross-examine an affiant is not afforded after proper request is made as herein provided, the affidavit shall not be admitted into evidence. Service for purposes of this section shall mean actual receipt;
2. The administrative judge may admit affidavits not submitted in accordance with this section where necessary to prevent injustice; or
3. Notice shall contain the following information and be substantially in the following form:

The accompanying affidavit of (here insert name of affiant) will be introduced as evidence at the hearing in (here insert title of proceeding). (Here insert name of affiant) will not be called to testify orally and you will not be entitled to question affiant unless you notify (here insert name of the proponent or his attorney) at (here insert address) that you wish to cross-examine affiant. To be effective your request must be mailed or delivered to (here insert name of proponent or his attorney) on or before (here insert the date seven days after the date of delivering the affidavit to the opposing party).

- (c) Documentary evidence otherwise admissible may be received in the form of copies or excerpts, or by incorporation by reference to material already on file in the contested case. Upon request, parties shall be given an opportunity to compare the copy with the original, if reasonably available;
 - (d) Every party shall have the right to examine any witness who testifies at the hearing;
 - (e) The administrative judge may take judicial notice of judicially cognizable facts. In addition, judicial notice may be taken of generally recognized technical or scientific facts within the administrative judge's specialized knowledge. Parties shall be afforded an opportunity to contest the administrative judge's decision to take judicial notice prior to the administrative judge taking judicial notice. The administrative judge's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence even if the facts are not judicially noticed; and
 - (f) Following commencement of a contested case by notice on a party entitled to a hearing, the administrative judge may, upon his/her own action or upon timely motion of any party, decide any procedural question.
- (10) Subpoenas.
- (a) The administrative judge, at the request of any party, shall issue subpoenas, effect discovery, and issue protective orders in accordance with the Tennessee Rules of Civil Procedure, except that service may be by certified mail in addition to means of service provided by the Tennessee Rules of Civil Procedure. The administrative judge shall decide any objection relating to discovery under this chapter or the Tennessee Rules of Civil Procedure. Subpoenas for taking depositions and for hearing attendance shall be consistent with Rule 45 of the Tennessee Rules of Civil Procedure. The witness shall be entitled to the same fees as are now or may hereafter be provided for witnesses in

(Rule 1720-01-05-.01, continued)

civil actions in the circuit court, and the party requesting the subpoena shall bear the cost of paying fees associated therewith.

- (b) In case of disobedience to any subpoena issued and served under this section or to any lawful administrative judge requirement for information, or of the refusal of any person to testify in any matter regarding which he/she may be interrogated lawfully in a proceeding before an administrative judge, the University may apply to the circuit or chancery court of the county of such person's residence for an order to compel compliance with the subpoena or the furnishing of information or the giving of testimony.
 - (c) Any party to a contested case may take the depositions of parties or witnesses, or may serve interrogatories and requests for production of documents upon any party, within or without the state, in the same manner as is provided by the Tennessee Rules of Civil Procedure. Depositions and interrogatories so taken shall be admissible in contested cases. All or any part of the deposition or interrogatory may be objected to at the time of the hearing and may be received in evidence or excluded from the evidence by the administrative judge in accordance with the provisions of these rules regarding evidence.
 - (d) The right to subpoena witnesses and to compel the production of records, and the right to take depositions shall be subject to such limitations and restrictions as the administrative judge may determine to be necessary to prevent abuse and oppression.
- (11) Admission of Facts - Discovery - Inspection of University Files.
- (a) After commencement of a contested case, a party may serve upon any other party a written request for the admission by the latter of the genuineness of any relevant documents described in and exhibited with the request or of the truth of any relevant matters of fact set forth in the request. Copies of the document shall be served with the request unless copies have already been furnished. Each of the matters of which an admission is requested shall be deemed admitted unless within a period designated in the request, not less than fifteen (15) days after service thereof or within such shorter or longer time as the administrative judge may allow, the party to whom the request is directed serves upon the party requesting the admission either:
 - 1. A sworn statement denying specifically the matters of which an admission is requested or setting forth in detail the reasons why the party cannot truthfully admit or deny those matters; or
 - 2. Written objections on the ground that some or all of the requested admissions are privileged or irrelevant or that the request is otherwise improper in whole or in part. If written objections to a part of the request are made, the remainder of the request shall be answered within the period designated in the request. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party deny only a part or a qualification of a matter of which an admission is requested, the party shall specify so much of it as is true and deny only the remainder.
 - (b) Any admission made by a party pursuant to a request for such is for the purpose of the pending action only and neither constitutes an admission by the party for any other purpose nor may be used against the party in any other proceedings;

(Rule 1720-01-05-.01, continued)

- (c) In a contested case, depositions may be taken as the same are taken in state courts of record, and the administrative judge shall have the same powers and discretion with respect thereto as are vested in state courts of record;
- (d) Parties are encouraged where practicable to attempt to achieve any necessary discovery informally, in order to avoid undue expense and delay in the resolution of the matter at hand. When such attempts have failed, or where the complexity of the case is such that informal discovery is not practicable, discovery shall be sought and effectuated in accordance with the Tennessee Rules of Civil Procedure. Any information, documents, or things not timely disclosed or supplemented in response to a discovery request as required by the Tennessee Rules of Civil Procedure shall not be admitted into evidence at the hearing if offered by the non-disclosing party.
- (e) Upon motion of a party or upon the administrative judge's own initiative, the administrative judge may order that the discovery be completed by a certain date.
- (f) Any party to a contested case shall have the right to inspect the files of the University with respect to the matter and to copy therefrom, except that records may not be inspected the confidentiality of which is protected by law.
- (g) No discovery shall be submitted to or filed with the administrative judge unless necessary for resolution of a motion or if offered into evidence at the hearing.

(12) Intervention.

- (a) The administrative judge shall grant one (1) or more petitions for intervention if:
 - 1. The petition is submitted in writing to the administrative judge with copies served on all parties named in the notice of the hearing, at least seven (7) days before the hearing;
 - 2. The petition states facts demonstrating that the petitioner's legal rights, duties, privileges, immunities, or other legal interest may be determined in the proceeding or that the petitioner qualifies as an intervenor under any provision of law; and
 - 3. The administrative judge determines that the interests of justice and the orderly and prompt conduct of the proceedings shall not be impaired by allowing the intervention.
- (b) The administrative judge may grant one (1) or more petitions for intervention at any time, upon determination that the intervention sought is in the interest of justice and shall not impair the orderly and prompt conduct of the proceedings.
- (c) If a petitioner qualifies for intervention, the administrative judge may impose conditions upon the intervenor's participation in the proceedings as follows:
 - 1. Limiting the intervenor's participation to designated issues in which the intervenor has a particular interest demonstrated by the petition;
 - 2. Limiting the intervenor's use of discovery, cross-examination, and other procedures so as to promote the orderly and prompt conduct of the proceedings; and

(Rule 1720-01-05-.01, continued)

3. Requiring two (2) or more intervenors to combine their presentations of evidence and argument, cross-examination, discovery, and other participation in the proceedings.
 - (d) The administrative judge at least twenty-four (24) hours before the hearing shall render an order granting or denying each pending petition for intervention, specifying any conditions, and briefly stating the reasons for the order. The administrative judge may modify the order at any time, stating the reasons for the modification. The administrative judge shall promptly give notice of an order granting, denying, or modifying intervention to the petition for intervention and to all parties.
- (13) Continuances.
- (a) Continuances may be granted upon good cause shown in any stage of the proceeding. The need for a continuance shall be brought to the attention of the administrative judge as soon as practicable.
 - (b) Any case may be continued by mutual consent of the parties when approved by the administrative judge.
- (14) Hearing Procedures - The administrative judge conducts the hearing in the following manner. These procedures may be altered, at the discretion of the administrative judge, in accordance with any pre-hearing order and in order to serve the ends of justice. The administrative judge shall modify these procedures as necessary to comply with state or federal law, including, without limitation, Title IX of the Education Amendments of 1972, the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act), or the Family Educational Rights and Privacy Act of 1974.
- (a) Meeting is called to order by the administrative judge;
 - (b) The administrative judge introduces self and gives a very brief statement of the nature of the proceedings, including a statement of the administrative judge's and the Agency Head's role in the hearing process;
 - (c) The administrative judge asks the parties and any present counsel or representatives to introduce themselves;
 - (d) The administrative judge reads the notice of hearing with reference to appropriate statutes and rules;
 - (e) In student disciplinary matters, the student facing discipline is asked for a response to the charges; if he/she acknowledges that he/she violated the University rule as alleged, no further hearing may be necessary beyond the establishment of a disciplinary penalty; if he/she denies that he/she violated the University rule as alleged, then the hearing proceeds;
 - (f) The administrative judge then presents a brief explanation of how the hearing will proceed with respect to the presentation of proof including a statement that cross-examination and re-direct will be completely open and a statement of the admissibility standards for evidence in the hearing.
 - (g) The administrative judge swears all witnesses, which may be done immediately prior to their testimony;

(Rule 1720-01-05-.01, continued)

- (h) The parties are asked if they wish to exclude witnesses from the hearing room. All individual parties, including any intervenors, are permitted to remain in the hearing room. The University is permitted to designate one representative who may remain in the hearing room;
- (i) Any preliminary motions, stipulations, or agreed orders are entertained;
- (j) The Petitioner is the party bearing the overall burden of proof. Unless otherwise required by law, the Petitioner in a contested case bears the burden of proof by a preponderance of the evidence. The other party is the Respondent. Except as specified in this Rule, the administrative judge makes all decisions regarding which party has the overall burden of proof and the burden of proof on any issue.
- (k) The University shall be the Petitioner in the following contested cases:
 - 1. Student disciplinary proceedings;
 - 2. Proceedings involving the termination of a faculty member's tenure, the termination of a tenure-track faculty member before the expiration of the annual term, the termination of a non-tenure-track faculty member before the end of a definite-term appointment, and as otherwise required by Board of Trustees policy;
 - 3. Proceedings in which a staff employee is contesting the University's termination of a written employment agreement;
 - 4. Proceedings offered in connection with the support staff grievance process contesting demotion, suspension without pay, or termination for cause; except in cases where the employee alleges unlawful discrimination, discriminatory harassment, or violation of a statute, in which case the employee will be the Petitioner;
 - 5. Proceedings in which the employee contests a termination for gross misconduct; and
 - 6. Traffic and parking citation proceedings.
- (l) The employee shall be the Petitioner in employee proceedings not listed in Section 13(k).
- (m) Opening statements are allowed;
- (n) Unless otherwise directed by the administrative judge, Petitioner calls its witnesses and questioning proceeds as follows:
 - 1. Petitioner questions;
 - 2. Respondent cross-examines;
 - 3. Petitioner re-directs;
 - 4. The administrative judge has discretion to permit re-cross-examination; and
 - 5. The administrative judge may question a witness at any time.
- (o) Respondent calls witnesses and questioning proceeds as follows:

(Rule 1720-01-05-.01, continued)

1. Respondent questions;
 2. Petitioner cross-examines;
 3. Respondent re-directs;
 4. The administrative judge has discretion to permit re-cross-examination; and
 5. The administrative judge may question a witness at any time.
- (p) The parties are allowed to call appropriate rebuttal witnesses with examination proceedings as outlined above;
- (q) If any party has more than one (1) attorney, examination (direct examination, cross-examination, and objections) of any one (1) witness may only be performed by one (1) of the party's attorneys;
- (r) Closing arguments are allowed or may be reserved for the filing of post-hearing briefs. If arguments are allowed, the Petitioner argues first and, following the Respondent's argument, the Petitioner is entitled to a rebuttal argument;
- (s) The administrative judge explains that he/she will consider all of the evidence in the case, as well as supporting written materials to support any legal objections that were made, and that a decision will be written and served on the parties;
- (t) The administrative judge closes the hearing.
- (15) Initial order and final order.
- (a) Upon completion of the hearing, the administrative judge shall render an initial order, which shall become a final order unless review is sought by the University or other party in the manner hereinafter described.
 - (b) An initial order or final order shall be in writing and shall include conclusions of law, the policy reasons therefor, and findings of fact for all aspects of the order, including the remedy prescribed and, if applicable, the action taken on a petition for stay of the effective date of the order. Findings of fact shall be accompanied by a concise and explicit statement of the underlying facts of record which support the finding. The order must also include a statement of the available procedures and time limits for seeking reconsideration or other administrative relief and the time limits for seeking judicial review of a final order. An initial order shall include a statement of any circumstances under which the initial order may, without further notice, become a final order.
 - (c) Findings of fact shall be based exclusively upon the evidence of record in the adjudicative proceeding and on matters officially noticed in that proceeding. The administrative judge's experience, technical competence, and specialized knowledge may be utilized in the evaluation of evidence.
 - (d) If an administrative judge becomes unavailable, for any reason, before rendition of the initial or final order, a substitute shall be appointed by the Agency Head or designee. The substitute shall use any existing record and may conduct any further proceedings as is appropriate in the interest of justice.

(Rule 1720-01-05-.01, continued)

- (e) The administrative judge may allow the parties a designated amount of time after conclusion of the hearing for the submission of proposed findings and post-hearing briefs.
 - (f) An initial order shall be rendered within ninety (90) days after conclusion of the hearing or after submission of proposed findings unless such period is waived or extended with the written consent of all parties or for good cause shown.
 - (g) The administrative judge shall provide notice of the initial order to each party.
- (16) Review of Initial Order.
- (a) The University or other party may appeal an initial order to the Agency Head, except to the extent that such review is restricted or prohibited by law or rule of the University.
 - (b) An appeal of an initial order shall be filed with the Agency Head within fifteen (15) days after entry of the initial order. The fifteen (15) day period to file an appeal shall be tolled by submission of a timely request for reconsideration of the initial order in the manner hereinafter stated, and a new fifteen (15) day period shall start to run upon disposition of the request for reconsideration; a request for reconsideration shall be disposed of prior to disposition of an appeal, unless the Agency Head determines that action on the request for reconsideration has been unreasonably delayed.
 - (c) An appeal shall state the basis for appeal.
 - (d) The Agency Head, in reviewing an initial order, shall exercise all the decision making power that he/she would have had had he/she presided over the hearing, except to the extent that the issues subject to review are limited by law or rule of the University or by the Agency Head upon notice to all parties.
 - (e) The Agency Head shall afford each party an opportunity to present briefs and may, in the Agency Head's discretion, afford each party an opportunity to present oral argument.
 - (f) Before rendering a final order, the Agency Head may cause a transcript to be prepared, at the University's expense, of such portions of the proceeding under review as the Agency Head considers necessary.
 - (g) The Agency Head may render a final order disposing of the proceeding or may remand the matter for further proceedings with instructions to the administrative judge who rendered the initial order. Upon remanding a matter, the Agency Head may order such temporary relief as is authorized and appropriate.
 - (h) A final order or an order remanding the matter for further proceedings pursuant to this section, shall be rendered and entered in writing within sixty (60) days after receipt of briefs and oral argument, unless that period is waived or extended with the written consent of all parties or for good cause shown.
 - (i) 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 the matters required to be included in an initial order.

(Rule 1720-01-05-.01, continued)

- (j) The Agency Head shall provide notice the final order or order remanding the matter for further proceedings to each party and to the administrative judge who conducted the contested case.

(17) Reconsideration.

- (a) Any party, within fifteen (15) days after entry of an initial or final order, may file a request for reconsideration, stating the specific grounds upon which relief is requested. The filing of a request for reconsideration shall not be a prerequisite for seeking Agency Head or judicial review.
- (b) The request for reconsideration shall be disposed of by the same person rendering the initial or final order, if available.
- (c) The person who rendered the initial or final order that is the subject of the petition shall, within twenty (20) days of receiving a request for reconsideration, enter a written order either denying the request, granting the request and setting the matter for further proceedings; or granting the request and issuing a new initial or final order. If no action has been taken on the petition within twenty (20) days, the request shall be deemed to have been denied.
- (d) An order granting a request for reconsideration 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.
- (e) The sixty (60) day period for a party to file a request for review of a final order shall be tolled by granting the request for reconsideration and setting the matter for further proceedings, and a new sixty (60) day period shall start to run upon the disposition of the request for reconsideration by issuance of a final order by the agency.
- (f) A party may submit to the person entering the order a request for stay of effectiveness of an initial or final order within seven (7) days after its entry unless otherwise provided by statute or stated in the initial or final order. Action may be taken on the request for stay, either before or after the effective date of the initial or final order.

(18) Effective date of new order.

- (a) Unless a later date is stated in an initial or final order, or a stay is granted, an initial or final order shall become effective upon entry of the initial or final order. All initial and final orders shall state when the order is entered and effective.
- (b) All initial orders shall be signed by the administrative judge conducting the contested case, or a substitute appointed by the Agency Head, and all final orders shall be signed by the Agency Head or another University official authorized by the Agency Head to sign such final order in his/her absence.
- (c) A party may not be required to comply with the final order unless the party has been provided notice of the final order.
- (d) Unless a later date is stated in an initial order or a stay is granted, an initial order becomes a final order fifteen (15) days after entry of the initial order if no appeal is taken from the initial order.

(Rule 1720-01-05-.01, continued)

- (19) Judicial Review. Judicial review is permitted in accordance with Tennessee Code Annotated § 4-5-322 by filing a petition for review in the chancery court of Davidson County, unless another court is specified by statute, within sixty (60) days after the entry of a final order.
- (20) Ex parte communication.
 - (a) Unless required for the disposition of ex parte matters specifically authorized by statute, an administrative judge or an Agency Head serving in a contested case proceeding may not communicate, directly or indirectly, regarding any issue in the proceeding, while the proceeding is pending, with any person without notice and opportunity for all parties to participate in the communications.
 - (b) Nothing in subsection (a) is intended to preclude an administrative judge or Agency Head from communicating with staff assistants, the University's General Counsel and members of the General Counsel's staff, or outside counsel about matters other than the contested case if such persons do not receive ex parte communications of a type that the administrative judge or Agency Head would be prohibited from receiving, and do not furnish, augment, diminish, or modify the evidence in the record.
 - (c) Unless required for the disposition of ex parte matters specifically authorized by statute, no party to a contested case, and no other person may communicate, directly or indirectly, in connection with any issue in that proceeding, while the proceeding is pending, with the Agency Head or any person serving as an administrative judge, without notice and opportunity for all parties to participate in communication.
 - (d) If the Agency Head or administrative judge, before serving in that capacity, receives an ex parte communication of the type which may not properly be received while serving, he/she shall promptly disclose such communication to all parties to the contested case. This provision does not apply to a communication between an Agency Head and the University's General Counsel, members of the General Counsel's staff, or outside counsel if the communication is protected by the attorney-client privilege; provided, the Agency Head shall be subject to disqualification for bias, prejudice, interest, or other cause, including for any cause for which a circuit judge may be disqualified.
 - (e) An administrative judge or Agency Head who receives an ex parte communication in violation of this section shall place in the record of the pending matter all written communications received, all written responses to the communications received, all written responses to the communications, and a memorandum stating the substance of all oral communications received, all responses, made, and the identity of each person from whom the person received an ex parte communication, and shall advise all parties that these matters have been placed on the record. Any party desiring to rebut the ex parte communication shall be allowed to do so, upon requesting the opportunity for rebuttal within ten (10) days after notice of the communication.

Authority: T.C.A. §§ 4-5-102(3); 49-9-209(e); *Public Acts of Tennessee, Chapter 168; Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5; Public Acts of Tennessee, 1807, Chapter 64; and Public Acts of Tennessee, 1978, Chapter 938, Section 1.* **Administrative History:** Original rule filed October 16, 1979; effective November 30, 1979. Amendment filed July 29, 1983; effective October 14, 1983. Repealed and new rule filed May 27, 1986; effective August 12, 1986. Repealed and new rule filed October 31, 1990; effective January 29, 1991. Amendment filed July 30, 1991; effective October 29, 1991. Amendment filed January 13, 1999; effective May 31, 1999. Amendment filed November 17, 2000; effective March 30, 2001. Repeal and new rule filed February 23, 2018; effective May 24, 2018.

1720-01-05-.02 REPEALED.

Authority: T.C.A. §§ 4-5-219; 4-5-301; 4-9-110; *Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5; and Public Acts of Tennessee, 1807, Chapter 64.* **Administrative History:** Original rule filed October 31, 1990; effective January 29, 1991. Repeal filed January 13, 1999; effective May 31, 1999. Repeal filed February 23, 2018; effective May 24, 2018.