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# Notice of Rulemaking Hearing

Hearings will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, T.C.A. § 4-5-204. For questions and copies of the notice, contact the person listed below.

<b>Agency/Board/Commission:</b>	Austin Peay State University
<b>Division:</b>	
<b>Contact Person:</b>	Corey Harkey
<b>Address:</b>	601 College Street, Clarksville, Tennessee 37044
<b>Phone:</b>	931-221-7584
<b>Email:</b>	harkeyc@apsu.edu

Any Individuals with disabilities who wish to participate in these proceedings (to review these filings) and may require aid to facilitate such participation should contact the following at least 10 days prior to the hearing:

<b>ADA Contact:</b>	Corey Harkey
<b>Address:</b>	601 College Street, Clarksville, Tennessee 37044
<b>Phone:</b>	931-221-7584
<b>Email:</b>	harkeyc@apsu.edu

**Hearing Location(s)** (for additional locations, copy and paste table)

Address 1:	Room 103 BC, Morgan University Center		
Address 2:	601 College Street		
City:	Clarksville		
Zip:	37044		
Hearing Date:	05/12/2021		
Hearing Time:	11:00 am	<input checked="" type="checkbox"/> CST/CDT	<input type="checkbox"/> EST/EDT

**Additional Hearing Information:**

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

- Amendment  
 New  
 Repeal

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

Chapter Number	Chapter Title
0240-05-02	Student and Student Organization Conduct and Corrective Actions
Rule Number	Rule Title
0240-05-02-.01	Overview
0240-05-02-.02	Offenses
0240-05-02-.03	Academic and Classroom Misconduct

0240-05-02-.04	Corrective Actions
0240-05-02-.05	Procedures

Rules  
of  
Austin Peay State University

Chapter 0240-05-02  
Student and Student Organization Conduct and Corrective Actions

Division 0240-05 is amended by adding Chapter 02 Student Conduct and Student Organization and Sanctions, a table of contents, and Rules .01, .02, .03, .04, .05 so that it shall read as follows:

0240-05-02-.01	Overview
0240-05-02-.02	Offenses
0240-05-02-.03	Academic and Classroom Misconduct
0240-05-02-.04	Corrective Actions
0240-05-02-.05	Procedures

0240-05-02-.01 APSU Statement is added to Chapter 0240-05-02 Student and Student Organization Conduct and Corrective Actions and shall read as follows:

0240-05-02-.01 Overview

(1) Austin Peay State University students are expected to conduct themselves as law-abiding members of the community at all times. Admission to APSU carries with it special rights, privileges and responsibilities apart from those rights and duties enjoyed by non-students. In recognition of the special relationship that exists between APSU and its academic community, the APSU Board of Trustees has authorized the President of APSU to take such action as may be necessary to maintain university standards and preserve the integrity of APSU and its educational environment.

(2) Pursuant to this authority and in fulfillment of its duties to provide a secure and stimulating atmosphere in which individual and academic pursuits may flourish, the Board has developed the following regulations, intended to govern student conduct on the APSU campus. The University is directed to implement policies consistent with APSU rules. Students are also subject to federal, state, and local laws and regulations. If a student's violation of such laws or regulations also adversely affects APSU's pursuit of its educational objectives, APSU may enforce its own regulations regardless of any proceedings instituted by other authorities. Violation of any section of these rules or accompanying policies may subject a student to corrective measures by APSU whether or not such conduct violates state, local or federal laws.

(3) For the purpose of these rules or accompanying policies, a "student" is any person who is admitted, enrolled and/or registered for credit or non-credit bearing courses or training or who may no longer be enrolled and registered, but participated in prohibited conduct while at APSU for any academic period. This will include any period which follows the end of an academic period through the last day for registration for the next academic period, and during any period while the student is under suspension from APSU. Finally, "a student" shall also include any person subject to a period of suspension or removal from campus as a sanction which results from a determination of a violation of the policies, rules, and regulations governing student conduct. Students are responsible for compliance with APSU rules and policies at all times.

(4) Corrective action may be taken against a student for violation of the policies, rules, and regulations:

- a. which occur on APSU owned, leased or otherwise controlled property;
- b. while participating in international or distance learning programs;
- c. and off-campus, when the conduct impairs, interferes with, or obstructs any APSU activity or the mission, processes, and functions of APSU.

The University may enforce its own rules or policies regardless of the status or outcome of any external proceedings instituted in any other forum, including any civil or criminal proceeding.

(5) These rules are applicable to registered student organizations as well as individual students. Registered student organizations are subject to the conduct and actions of individual members of the organization while acting in their capacity as members of, or while attending or participating in any activity of the organization.

(6) Confidentiality of Conduct/Corrective Process. Subject to the exceptions provided in law or regulation, including but not limited to, the Family Educational Rights and Privacy Act of 1974 (FERPA) and the Tennessee Open Records Act, a student's conduct files are considered educational records and are confidential.

(7) The University is committed to respecting students' Constitutional rights. These rules or policies shall be interpreted in a way that does not violate student's constitutional rights including without limitation, the rights protected by the First Amendment to the United States Constitution.

Authority: T.C.A. §§ 4-5-101 et seq., 49-8-203, and § 10-7-504 et seq.

0240-05-02-02 Disciplinary Offenses is added to Chapter 0240-05-02 Student and Student Organization Conduct and Corrective Actions and shall read as follows:

0240-05-02-02 Offenses.

(1) APSU may impose corrective action for any inappropriate student conduct that shows a disregard for the rights of other members of APSU's academic community or which endangers property or persons on APSU, or APSU-controlled property.

(2) Misconduct by individual students or registered student organizations is subject to sanction and includes but is not limited to the following examples:

(a) Dangerous Conduct. Any conduct, or attempted conduct, which poses a direct threat or endangers the health, welfare, or safety of others;

(b) Hazing. Any act of hazing on or off the University campus or APSU controlled property, by an APSU student, group of students or registered student organization. Hazing means any act by one (1) student acting alone or with others which is directed against any other person that endangers the mental or physical health or safety of that person, or which induces or coerces a person to endanger such person's mental or physical health or safety. Hazing expands beyond those actions taken and situations created in connection with initiation into or affiliation with any organizations. Hazing does not include sanctioned athletic events or similar contests or competitions;

(c) Discrimination, Retaliation and Harassment. Any act against another individual or group in violation of University rules or policies, as well as federal or state laws prohibiting discrimination and harassment or retaliation;

(d) Disorderly Conduct. Any behavior which is abusive, obscene, lewd, indecent, violent, excessively noisy, disorderly, or which unreasonably disturbs or may reasonably provoke other groups or individuals (this may include, but not be limited to verbal abuse, nonverbal gestures and inappropriate behavior resulting from the use of being under the influence of alcohol or drugs), etc.;

(e) Obstruction of or Interference with APSU Activities or Facilities. Any intentional interference with or obstruction of any APSU program, event, or facility including, but not limited to the following:

1. Any unauthorized occupancy of APSU or APSU-controlled facilities or blockage of access to or from such facilities;
2. Interference with the right of any authorized person to gain access to any APSU or APSU-controlled activity, program, event or facility;
3. Any obstruction or delay of a campus security officer, public safety officer, police officer, firefighter, EMT, or any University official in the performance of their duty; or
4. Any form of disruptive behavior in the classroom, during any campus event; or activity or location on campus.

- (f) Misuse of or Damage to Property. Any act of misuse, vandalism, malicious or unwarranted damage or destruction, defacing, disfiguring or unauthorized use of property belonging to APSU or property being used, rented, owned or leased by a student, by a group of students or officially registered student organization not owned by APSU;
- (g) Theft, Misappropriation, or Unauthorized Sale. Any act of theft, misappropriation, or unauthorized possession, use or sale of APSU property or any such act against a member or organization of the APSU community or guest of APSU;
- (h) Misuse of Documents, Information or Identification Cards. Any forgery, alteration of or unauthorized use of APSU documents, forms, records or identification cards, including the giving of any false information, or withholding of necessary information, failure to carry the APSU ID card at all times or to show it upon proper request;
- (i) Firearms and Other Dangerous Weapons. Any possession of or carrying, whether openly or concealed, with the intent to go armed, any firearm, explosive, explosive weapon, bowie knife, hawk bill knife, ice pick, dagger, slingshot, leaded cane, switchblade knife, blackjack, knuckles, tasers, stun gun or any other weapon of like kind, not used solely for instructional or school-sanctioned ceremonial purposes, in any APSU property or APSU controlled property, as prohibited by state law. It is also prohibited to use a weapon or instrument to simulate a weapon in acts that endanger or threaten any person.
- (j) Explosives, Fireworks, and Flammable Materials. The unauthorized possession, ignition or detonation of any object or article which would cause damage by fire or other means to persons or property or APSU controlled property or possession of any substance which could be considered to be and used as fireworks or ammunition;
- (k) Alcoholic beverages. The use and/or possession of beverages containing alcohol and/or public intoxication on APSU-owned or controlled property, violation(s) of any local ordinance or state or federal law concerning alcoholic beverages, on or off campus, or a violation of the terms of the APSU Drug-Free Policy Statement. It shall not be a violation for students twenty-one (21) years of age or older to consume alcohol within areas designated by the President where alcohol is permitted to be served. In addition, officially registered student organizations that sponsor events off campus, where alcoholic beverages are present and available for consumption, must adhere to all local, state and federal laws concerning alcoholic beverages and must follow APSU's Risk Management Guidelines for Student Organizations;
- (l) Drugs. The unlawful possession or use of any drug, controlled substance or drug paraphernalia (including, but not limited to, any prescription drug, stimulant, depressant, narcotic or hallucinogenic drug or substance, or marijuana), or sale or distribution of any such drug or controlled substance, or a violation of any terms of the APSU Drug-Free Policy;
- (m) Gambling. Participation in any unlawful gambling or gambling-related activities. Any permitted gambling or gambling-related activity, e.g. raffles, must also be operated under the auspices of the APSU's Foundation;
- (n) Financial Irresponsibility. Failure to promptly meet financial responsibilities to APSU including, but not limited to, knowingly passing a worthless check or money order in payment;
- (o) Unacceptable Conduct in Hearings. Any conduct at an APSU hearing involving contemptuous, disorderly behavior, or the giving of false information;
- (p) Failure to Cooperate with University Officials. Failure to comply with directions of APSU officials acting in the performance of their duties;
- (q) Violation of General Rules and Regulations. Any violation of the general rules, policies and regulations of the University as published in an official APSU publication, whether in print or digital, including but not limited to, the failure to perform any required action or the performance of any prohibited action;
- (r) Attempts and Aiding and Abetting the Commission of offenses. Any attempt to commit any of the offenses listed in this document, or the aiding and abetting of the commission of any of the offenses;

- (s) Violations of Local, State or Federal Laws. Any violation of local, state or federal laws or regulations proscribing conduct or establishing offenses, which laws and regulations are incorporated herein by reference;
- (t) Violation of Imposed Sanctions. Violation of a sanction officially imposed by an APSU official or a constituted body;
- (u) Violations of APSU Residence Hall or Apartment rules, policies or regulations. The violation of any rules, policies or regulations which appear in materials, distributed to resident students (i.e., housing license agreements, handbooks for resident students, etc.);
- (v) Sexual Harassment. An offense including acts of sexual discrimination, sexual assault, domestic violence, dating violence and/or stalking as defined in university policy or rules, as well as federal or state laws prohibiting said acts. All matters involving allegations of Sexual Harassment will be governed by the procedures set out in University policy and rules and handled by the Office of Equity, Access, and Inclusion, rather than the process specified herein;
- (w) Smoking, Vaping and Tobacco Smoking, inclusive of electronic smoking devices and vapors, or other tobacco usage in all APSU buildings, grounds and state-owned or controlled vehicles is prohibited (except in otherwise designated areas as provided in applicable APSU rule or policy);
- (x) Animals. With the exception of service animals, emotional support animals, and animals used for academic research purposes, animals are prohibited on all APSU controlled properties except in designated housing areas. Students are required to provide the Office of Disability Services with medical documentation in requesting disability accommodations;
- (y) Filing a False Complaint or Statement. Any behavior whereby a student knowingly submits a false complaint or statement alleging a violation of these rules or policies by another student or organization or APSU employee;
- (z) Academic Misconduct. Includes, but is not limited to plagiarism, cheating, facilitation, fabrication or collusion. For purposes of this section the following definitions apply:
1. Plagiarism. The adoption or reproduction of ideas, words, statements, images, or works of another person or one's self without proper attribution.
  2. Cheating. Using or attempting to use unauthorized materials, information, or aids in any academic exercise or test/examination. The term academic exercise includes all forms of work submitted.
  3. Fabrication. Unauthorized falsification or invention of any information or citation in an academic exercise.
  4. Facilitation or Collusion. Assisting or attempting to assist another to violate a provision of APSU's Student Code of Conduct regarding academic misconduct.
  5. Unauthorized Distribution of Classroom Materials. Unauthorized distribution of classroom recording or other classroom materials. Sharing, posting or selling classroom information without approval from the instructor;
- (aa) Unauthorized Duplication or Possession of Keys. Making, or the possessing of any key for an APSU facility without proper authorization;
- (bb) Litter. Dispersing litter in any form onto the grounds or facilities of APSU;
- (cc) Abuse of Computer Resources and Facilities. Misusing and/or abusing computer resources including, but not limited to the following:
1. Distribution or use of a student and/or another person's identification to gain access to APSU computer resources;

2. Use of APSU computer resources and facilities to violate copyright laws, including, but not limited to the act of unauthorized distribution of copyrighted materials using university information technology systems;
3. Unauthorized access to a computer or network file, including but not limited to altering, using, reading, copying, or deleting the file;
4. Unauthorized transfer of a computer or network file;
5. Use of computing resources and facilities to send abusive or obscene correspondence, images, video or audio files;
6. Use of computing resources and facilities in a manner that interferes with normal operation of the APSU computing system;
7. Use of computing resources and facilities to interfere with the work of another student, faculty member, or APSU official;
8. Violation of any published information technology resources policy or rule; or
9. Unauthorized peer-to-peer file sharing.

(ee) Unauthorized Access to APSU Facilities and Grounds. Any unauthorized access or occupancy of APSU facilities and grounds is prohibited, including, but not limited to, gaining access to facilities and grounds that are closed to the public, being present in areas of campus that are open to limited guests only, being present in academic buildings after hours without permission, and being present in buildings when the student has no legitimate reason to be present;

(ff) Unauthorized Surveillance. Making or causing to be made unauthorized images of a person in a location in which that person has a reasonable expectation of privacy, without the prior effective consent of the individual, or in the case of a minor, without the prior effective consent of the minor's parent or guardian, recognizing that the parent cannot consent on behalf of a child for criminal acts as provided in state law. This includes, but is not limited to, taking video or photographic images in shower/locker rooms, residence hall rooms, and restrooms, and storing, sharing, and/or distributing of such unauthorized images by any means;

(gg) Uncontrolled or Unsafe Rollerblading/Skateboarding/Other Coasting Device. Individuals are prohibited from using rollerblades/skateboards/coasting devices in an unsafe and/or reckless manner on the APSU campus and must comply with applicable APSU rule or policy.

(3) Corrective action may be taken against a student or registered student organization for violations of the foregoing rules which occur on APSU property, or which occur off-campus when the conduct impairs, interferes with, or obstructs any APSU activity or the missions, processes and functions of APSU. In addition, corrective action may be taken on the basis of any conduct, on or off-campus which violates local, state or federal laws, which violate APSU rules or policies for student organizations, or which poses a substantial threat to persons or property within the APSU community. Each student shall be responsible for their conduct from the time of application for admission through the actual awarding of a degree including periods prior to or between semesters.

(4) Conduct occurring while a student is registered or enrolled at APSU, but not discovered until after the awarding of a degree, is actionable under these provisions and may result in a retroactive sanction. Should a student withdraw from APSU with corrective action or academic misconduct action pending and not yet concluded, the student's record may be encumbered by the appropriate APSU 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.

0240-05-02-.03 Academic and Classroom Misconduct is added to Chapter 0240-05-02 Student and Student Organization Conduct and Corrective Actions and shall read as follows:

0240-05-02-.03 Academic and Classroom Misconduct.  
SS-7037 (March 2020)

(1) The instructor has the primary responsibility for control over classroom behavior and maintenance of academic integrity, and can order the temporary removal or exclusion from the classroom of any student engaged in disruptive conduct or conduct that violates the general rules and regulations of APSU. Extended or permanent exclusion from the classroom, beyond the session in which the conduct occurred, or further corrective action can be effected only through appropriate procedures established by the Division of Student Affairs. Temporary removal or exclusion from the classroom by the faculty does not constitute a corrective suspension or expulsion.

(2) Academic dishonesty includes, but is not limited to, plagiarism, the changing or falsifying of any academic documents or materials, cheating and giving or receiving of unauthorized aid in tests, examinations or other assigned work. Students responsible for academic misconduct, either directly or indirectly through participation or assistance, are responsible to the instructor of the class. Sanctions for academic misconduct will vary with the seriousness of the offense and may include, but are not limited to, a grade of "F" on the work in question, a grade of "F" in the course, reprimand, probation, suspension and expulsion. The student will be advised of their rights. The student may accept the instructor's finding, grade reduction, and/or other sanction and waive their right to a hearing. In the event a student believes they have been erroneously accused of academic misconduct, they may request a hearing. Hearings will be conducted pursuant to the procedures set forth in Part 5, Conduct Procedures, below. If the student is found responsible for the allegation(s) of academic misconduct, the grade as assigned by the instructor will stand. Should the hearing source find the student not responsible for the academic misconduct, the faculty member will reassess the student's grade based upon the hearing source's findings. When necessary, grade changes will be made administratively.

(3) Students may appeal a graded assignment associated with a finding of academic misconduct, as distinct from a student corrective action, through appropriate APSU academic grade appeal procedures. Courses may not be dropped pending the final resolution of an allegation of academic misconduct.

(4) Disruptive behavior in the classroom (on ground or virtual) may be defined, but is not limited to, behavior that obstructs or interferes with the learning environment (e.g., repeated outbursts from a student which interferes with the flow of instruction or prevents concentration on the subject taught, failure to cooperate in maintaining classroom decorum, the presence of non-enrolled visitors in the classroom (including but not limited to minors), the continued use of any noise or light-emitting device which disturbs or interrupts the concentration of others (e.g., disturbing noises from text messaging, cell phones, laptop computers, games, etc.).

(5) Class attendance and punctuality requirements are established by the faculty through the syllabus for each course. Students are expected to attend class regularly and on time and are responsible for giving explanations/rationale for absences and lateness directly to the faculty member for each course in which they are enrolled. In cases where student absences are the result of emergency circumstances (e.g., death in the family, a student's serious injury or incapacitating illness), for which student(s) are unable to make immediate contact with faculty, the student may contact the Student Affairs office for assistance in providing such immediate notification to faculty. However, the student remains responsible for verifying the emergency circumstances to faculty and for discussing arrangements with faculty for possible completion of coursework requirements, if feasible.

Authority: T.C.A. §§ 4-5-101 et seq. and 49-8-203.

0240-05-02-.04 Disciplinary Sanctions is added to Chapter 0240-05-02 Student and Student Organization Conduct and Corrective Actions and shall read as follows:

0240-05-02-.04 Corrective Actions.

(1) APSU shall adopt and publish guidelines, providing notice of potential corrective actions consistent with these rules or policies applicable to both individuals and organizations. The guidelines may include any appropriate corrective action subject to prior review by the APSU Office of Legal Affairs and approval by the Board of Trustees. Upon a determination that a student or student organization has violated any of the offenses set forth in these rules, policies, or guidelines, corrective action may be imposed, either singly or in combination, by the appropriate school officials. (Note: Records may be released only as authorized by state or federal law, including but not limited to final results of conduct proceedings for violations that include crimes of violence, as defined by Tennessee law, or non-forcible sex offenses may be released without consent as required by state law.)



(2) Definition of Corrective Actions. The following provides a non-exhaustive list of possible sanctions with corresponding definitions:

(a) Restitution. Restitution may be required in situations which involve destruction, damage, or loss of property, or unreimbursed medical expenses resulting from physical injury. When restitution is required, the student or student organization is obligated by the appropriate authority to monetarily compensate a party or parties for a loss suffered as a result of violation(s). Any such monetary payment in restitution shall be limited to the actual cost of repair, replacement or financial loss;

(b) Warning. The appropriate APSU official may notify the student or student organization that continuation or repetition of specified conduct may be cause for other corrective action;

(c) Reprimand. A written or verbal reprimand or censure may be given to any student or student organization whose conduct violates any part of these rules and provides notice that any further violation(s) may result in more serious penalties;

(d) Restriction. A restriction upon a student's or registered student organization's privileges for a period of time may be imposed. This restriction may include, but is not limited to, the following: denial of the right to represent APSU in any way, denial of the use of APSU facilities and/or parking privileges, restriction of participation in extracurricular activities, restriction of organizational privileges including registration, and restriction of the transfer of academic credit from another institution;

(e) University Probation. Continued enrollment of a student or student organization on probation may be conditioned upon adherence to these rules or accompanying policies. Any student or registered student organization placed on probation will be notified of such in writing, either in hard copy or electronic format, and will also be notified of the terms and length of probation. Probation may include restrictions upon the extracurricular activities of a student or registered student organization. Any conduct in violation of these rules or accompanying policies while on probationary status or the failure to comply with the terms of the probationary period may result in the imposition of an elevated sanction;

(f) Suspension. If a student or student organization is suspended, he/she or the organization is separated from APSU for a stated period of time with conditions for readmission stated in the notice of suspension;

(g) Expulsion. Expulsion entails a permanent separation from APSU. The imposition of this sanction is a permanent bar to the student's readmission or a registered student organization's recognition by APSU. A student or registered student organization that has been expelled may not enter APSU property or facilities without obtaining prior approval from an appropriate university official with knowledge of the expulsion directive. This includes all non-credit and distance education classes and programs;

(h) Interim or Summary Suspension. As a general rule, the status of a student or student organization accused of violations of these rules should not be altered until a final determination has been made in regard to the charges. Interim or Summary Suspension may be imposed upon a finding by the appropriate APSU official that the continued presence of the accused on campus constitutes an immediate threat to the physical safety and well-being of the accused or of any other member of the APSU community or its guests, destruction of property, or substantial disruption of classroom or other campus activities. In any case of Interim 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;

(i) Housing Probation. A student or registered student organization placed on housing probation is deemed not to be in good standing with the housing community, and his/her continued residence is conditioned upon adherence to these rules and the Housing Contract. Any student or registered student organization placed on probation shall be notified in writing or via email of the terms and length of the probation. Probation may include restrictions upon the activities of the housing resident, including any other appropriate special condition(s). Any conduct of a similar or more serious nature in violation of the probation may result in suspension from housing;

(j) Housing Suspension and Forfeiture. A student or registered student organization suspended from housing may not reside in, visit, or make any use whatsoever of a housing facility or participate in any housing activity during the period for which the sanction is in effect. A suspended student or registered student organization shall be required to forfeit housing fees (including any unused portion thereof and

the Housing deposit). A suspended student or registered student organization must vacate the housing unit within forty-eight (48) hours. Housing suspension shall remain a part of the student's record;

(k) Service to the University. A student or registered student organization may be required to donate a specified number of service hours to APSU, by way of performing reasonable tasks for the appropriate APSU office or official. This service shall be commensurate to the offense the student or registered student organization is guilty of violating (i.e., service to maintenance staff for defacing APSU property);

(l) Educational Program. A student or student organization may be required to participate in any educational programs relevant to the offense to attend special seminars or educational programs or to prepare a project or report concerning a relevant topic;

(m) Smoking and Clean Air Policy Violation. There will be graduated fines imposed for violation of the Smoking and Clean Air Policy in accordance with APSU rules and policies;

(n) Referral for Intervention, Assessment and/or Counseling. The student is mandated to visit the appropriate APSU official for an initial intervention and assessment which may be followed by required participation and a prescribed plan of action or treatment plan by an APSU or off campus provider. Release of information may be required. Parents or legal guardians may be notified in certain situations;

(o) Fines. Penalties in the form of fines may be enforced against a student or an organization whenever the appropriate hearing officer(s) or hearing body deems necessary. The sanction of fines may be imposed in addition to other forms of corrective actions. Failure to pay fines to the Business Office within two (2) weeks of the decision may result in further corrective action;

(p) Letter of Apology. A student or student organization may be given the opportunity, under certain circumstances, to voluntarily apologize to APSU or its guests, another student or student organization, faculty or staff member, or any other affected party, either verbally or in writing, as an alternative or in addition to the imposition of other sanctions, for the behavior related to an offense;

(q) Revocation of Admission, Degree, or Credential; and,

(r) Any alternate sanction deemed necessary and appropriate to address the misconduct at issue.

Authority: T.C.A. §§ 4-5-101 et seq. and 49-8-203.

0240-05-02-.05 Disciplinary Procedures is added to Chapter 0240-05-02 Student and Student Organization Conduct and Corrective Actions and shall read as follows:

0240-05-02-.05 Procedures.

(1) Hearing Options:

(a) Procedures conforming to the Uniform Administrative Procedures Act (UAPA). All cases which may result in (i) suspension or expulsion of a student or student organization from APSU for conduct related reasons, or (ii) revocation of registration of a student organization during the term of the registration are subject to the contested case provisions of the UAPA § T.C.A. 4-5-301 et seq. and shall be processed in accordance with the uniform contested case procedures adopted by the Board of Trustees, unless the student or student organization waives those procedures in writing and elects to have his or her case heard by either the University Hearing Board or an Administrative Hearing.

(b) Cases which are not subject to the contested case procedures under the Uniform Administrative Procedures Act and cases in which a student or student organization has waived the contested case procedures in writing shall be processed in accordance with APSU Hearing Procedures. APSU has established two (2) alternate APSU Hearing Procedures:

1. A hearing conducted by one (1) or more Student Affairs Administrators; or
2. A hearing conducted by the University Hearing Board. (Note: This option shall be available until the final ten (10) class days of each semester, or the final five (5) class days of the second summer term, during which time all hearings will be conducted by appropriate Student

Affairs Administrators, except those subject to UAPA procedures as selected by the student or student organization.)

(c) Cases which are not subject to the contested case procedures under the Uniform Administrative Procedures Act and which involve minor first offenses by students or student organizations may be discussed informally. In such cases, no formal record will be maintained in the conduct records of APSU. The Dean of Students or other designee, appointed by the Vice President for Student Affairs, shall note the name of the student or student organization involved in his/her personal records. The purpose of this notation is only to determine a student's or student organization's prior involvement in a minor offense, when and if a second offense occurs at a later date. If the student or student organization is subsequently involved in another violation of regulations, at the discretion of the hearing body, this Informal Record will become a part of the student's or student organization's Formal Conduct Records.

(d) Alternative resolution methods may include, but are not limited to, mediation and/or negotiated resolutions.

(e) Jurisdiction of Cases to be heard by Student Affairs Administrators:

1. All formal cases involving incidents which occur in APSU residence halls and/or apartments and which involve on-campus residents shall be heard by the Residence Life staff or designee.

2. All other formal cases shall be heard by the Dean of Students, or appropriate designee, except in cases where such staff member is unavailable or has a bias toward either party in the pending case. In such cases the Vice President for Student Affairs shall assign one (1) or more Student Affairs Administrators to hear the case.

(2) Commencement of Conduct Proceedings.

(a) A student or registered student organization accused of violating APSU policies, rules, or regulations shall be called before the Dean of Students or designee, appointed by the Vice President for Student Affairs, for a preliminary conference at which the student or registered student organization will be advised of the following:

1. The charges against him/her/or organization;

2. The rights afforded to the student or organization by the hearing procedures which are available;

3. The hearing procedure options available; and

4. The responsibilities of the student or registered student organization in the conduct procedures.

(b) A student or registered student organization may waive the right to a preliminary conference and an oral explanation of the items listed in (2) (a) above.

(c) Once advised of the hearing options, the student or registered student organization may elect to accept the finding and sanction from the Dean of Students or designee, or elect a hearing pursuant to UAPA (where appropriate), or a hearing before the University Hearing Board.

(d) The election must be made within three (3) class days of receipt of notice of pending charges against him/her or organization by completing, and signing, an Election of Procedure form and/or waiver form. Once the election is made, the decision is final and may not be changed during the course of the hearing.

(e) Complaints related to discrimination or harassment will be investigated in accordance with applicable APSU policies and rules. If APSU determines that discrimination or harassment occurred that falls outside of the Title IX regulations or APSU's applicable rule or policy, the student or organization will be subject to the conduct procedures outlined in this rule and related policies.

(f) This rule does not apply to matters that fall within the scope of Title IX of the Education Amendments of 1972.

### (3) APSU Hearing Rights

These rights shall be afforded the accused student/organization in all APSU Hearings before the appropriate Student Affairs administrator or the University Hearing Board.

(a) The right to choose the desired hearing option. (This right must be exercised within three (3) class days of the presentation of charges. Note: This University Hearing Board option shall be available until the final ten (10) class days of each semester, or the final five (5) class days of the second summer term, during which time all conduct hearings will be conducted by appropriate Student Affairs administrators, except those subject to UAPA procedures.)

(b) The right to written notice, by United States mail, courier service, hand delivery to the permanent or local address on file for the student, or APSU email, of the time, place, and date of the hearing at least three (3) days in advance of the hearing. A justified delay may be granted. The right to at least a three day notice may be waived in writing by the students and or student organization.

(c) The right to a written statement of the charges in time and detail sufficient to enable the student/organization to prepare for a hearing.

(d) The right to be accompanied by an adviser of the student's/organization's choice, but such adviser participation shall be limited to directly advising the student/organization during the hearing.

(e) The right to a statement of the possible corrective actions that may be imposed as a result of a finding of a violation of the Student Code, at least three (3) days in advance of the hearing.

(f) The right to present witnesses in the student's/registered student organization's behalf and to question any witnesses presented. The student/organization is responsible for the attendance of any witnesses to be present on the student's/organization's behalf.

(g) The right to be informed in writing, delivered either by United States Postal Service mail, courier service, hand delivery to the permanent or local address on file for the student, or via email, of:

1. The final administrative decision.
2. The proper procedure for appeal.

(h) The right to be provided copies, upon request and in accordance with APSU policies, rules, and guidelines, of all complaints, reports, witness statements and other written materials used in determining the charges.

(i) In cases involving sexual misconduct, the right to the name of each witness APSU expects to present at the student conduct proceeding and those APSU may present if the need arises.

(j) In cases involving sexual misconduct, the right to request a copy of APSU's investigative file, redacted in accordance with the Family Educational Rights and Privacy Act of 1974.

(k) In cases involving sexual misconduct, the student's right to request copies of all documents, copies of all electronically stored information, and access to tangible information that APSU has in its possession, custody, or control and may use to support claims or defenses, unless the use would solely be for impeachment.

### (4) Rights of Complainant and/or Respondent

The APSU member (student, faculty or staff) who self-authors on their own behalf a complaint shall have the following rights:

(a) To be notified of their rights prior to making a statement and be provided a copy of any statements made in regard to the violation;

- (b) To attend the hearing, submit a list of witnesses to be called to the hearing, to be given the opportunity to question all witnesses;
- (c) To have an adviser present during the hearing. Adviser participation shall be limited to directly advising the student/organization during the hearing;
- (d) To be permitted to dismiss the complaint only up to the date of the hearing;
- (e) To be notified of the outcome of the hearing, including the finding of responsibility and sanctions;
- (f) In cases involving sexual misconduct, the right to obtain the name of each witness APSU expects to present at the student proceeding and those APSU may present if the need arises;
- (g) In cases involving sexual misconduct, the right to request a copy of the APSU's investigative file, redacted in accordance with the Family Educational Rights and Privacy Act of 1974 and.
- (h) In cases involving sexual misconduct, the student/organization's right to request copies of all documents, copies of all electronically stored information, and access to tangible evidence that APSU has in its possession, custody, or control and may use to support claims or defenses, unless the use would solely be for impeachment.

(5) APSU Hearing Procedures

- (a) Hearings before a Student Affairs Administrator. The appropriate Student Affairs Administrator shall act as hearing officer in the hearing, shall determine students/organization's finding of responsibility and shall apply sanctions as appropriate. This administrator shall create the record which must include, but may not be limited to, evidence of witness testimony and any exhibit provided by any party, in addition to the technical record.
- (b) Hearings before the University Hearing Board. Procedures for the Board include the following:
  1. The Hearing Board shall be composed of nine (9) persons: five (5) students, (two (2) automatically selected from the Student Tribunal Justices of the Student Government Association), and three (3) selected by SGA, two (2) faculty and two (2) administrators, all appointed by the University President, for a term of one (1) academic year. Additionally, student, faculty and administrator alternate members shall be selected to serve in the absence of regular members and shall be appointed by the University President for a term of one (1) academic year.
  2. The Chair of the Hearing Board shall be appointed by the University President.
  3. A minimum of five (5) members of the Hearing Board are required to hear a conduct case, composed of at least two (2) students, one (1) faculty member, and one (1) administrator. The Hearing Board shall create the record which must include, but may not be limited to, evidence of witness testimony and any exhibit provided by any party in addition to the technical record.
  4. The Dean of Students or designee shall train and advise all regular and alternate members of this Hearing Board in appropriate procedures.
  5. The hearing shall be conducted consistent with the rights described above in paragraphs (3) and (4) of this rule.
  6. All hearings shall be closed unless the respondent and the complainant both elect in writing to have an open hearing.
  7. Formal rules of evidence shall not be applicable. The adjudicating body may exclude evidence which in its judgment is immaterial, irrelevant, or unduly repetitious.
  8. The standard of proof used for all cases is the preponderance of evidence.
  9. The hearing source shall issue a written decision within three (3) class days after the conclusion of the hearing.

10. The student will be advised in writing via APSU email (and USPS mail if requested by the student) of the Hearing Board or Student Affairs Administrator decision and all sanctions imposed as a result of the conduct hearing.

11. Any sanction imposed shall be effective immediately upon written notification of the student/organization unless the hearing authority deems a stay of such sanction desirable pending appeal.

12. In any case where the sanction results in separation from APSU, the decision shall be reviewed by the Vice President for Student Affairs or designee prior to notifying the Office of the Registrar and the Academic Department in which the student has been enrolled.

(6) Appeals

(a) The student may appeal a decision(s) of the University Hearing Board or the Student Affairs Administrator. Appeals are made to the Vice President for Student Affairs or designee.

(b) Student(s) or organization(s) may make an appeal within five (5) business days of the date notification of sanction imposed. Appeals must be in writing indicating the reason(s) for the appeal and submitted to the Student Affairs office.

(c) Appeals shall be limited to the following reasons:

1. Were procedures properly followed in the hearing?
2. Did the hearing use the appropriate standard of review?
3. Was the sanction appropriate for the violation?
4. New information, not available at the time of the original hearing, has become available which would substantially alter the outcome of the hearing.

(d) Review shall be based solely on the hearing record and the written appeal documents submitted by the student.

(e) Appellate Authority. The Vice President for Student Affairs, or designee, shall have the authority to do any of the following upon review of an appeal:

1. Uphold the finding of responsibility and sanction;
2. Uphold the finding of responsibility but adjust the sanction up or down;
3. Return the case for further consideration by the original hearing authority; or
4. Reverse the finding of responsibility.

(f) The Vice President for Student Affairs or designee shall issue a written decision within five (5) business days after the appeal is heard.

(g) The decision of the Vice President for Student Affairs or designee is final.

(7) Student Organization Sanctions

Any registered student organization may be given a warning, reprimand, placed on probation, suspension, or restriction or may have its registration withdrawn by the Dean of Students, or by a Student Affairs Administrator appointed by the Vice President for Student Affairs. Such actions may be taken after having a hearing conducted in accordance with the procedures outlined in these rules for conduct procedures.

The contested case provisions of the UAPA will be used in the case of withdrawal of registration of an organization, unless those provisions have been waived in writing by an authorized representative of the student organization. Withdrawal of Registration may be taken for any one of the following reasons:

- (a) The organization fails to maintain compliance with the initial requirements for registration;
- (b) The organization ceases to operate as an active organization;
- (c) The organization requests withdrawal; and
- (d) The organization operated or engaged in any activity in violation of the policies, rules, and regulations of APSU, of any governing body of federal or state laws.

Authority: T.C.A. §§ 4-5-101 et seq. and 49-8-203.

I certify that the information included in this filing is an accurate and complete representation of the intent and scope of rulemaking proposed by the agency.

Date: March 12, 2021

Signature: e/Corey Harkey

Name of Officer: Corey Harkey

Title of Officer: Interim General Counsel

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Tre Hargett  
Secretary of State

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