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Sequence Number: 08-14-15
 Rule ID(s): 6002
 File Date (effective date): 8/18/15
 End Effective Date: 2/14/16

Emergency Rule Filing Form

Emergency rules are effective from date of filing for a period of up to 180 days.

Agency/Board/Commission: Tennessee Board of Regents
Division: System-wide Student Rules
Contact Person: Mary G. Moody
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 Nashville, Tennessee
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Rule Type:
 Emergency Rule

Revision Type (check all that apply):
 Amendment
 New
 Repeal

Statement of Necessity:
 In January, 2015 the U.S. Department of Education, Office for Civil Rights (OCR) completed its investigation of a complaint from a student at a TBR institution. The Complainant alleged discrimination on the basis of disability and retaliation. OCR found that the institutional policy is in noncompliance with Section 504 at 34 C.F.R. §§ 104 et seq., and Title II, with respect to two (2) issues alleged by the Complainant. As a result of the investigation and settlement with OCR, TBR and its institutions must revise the language in its Rule and subordinate policies to come into compliance with Section 504 and Title II.

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

Chapter Number	Chapter Title
0240-02-03	Student Conduct and Disciplinary Sanctions
Rule Number	Rule Title
0240-02-03-.02	Disciplinary Offenses
0240-02-03-.04	Disciplinary Sanctions
0240-02-03-.06	Disciplinary Procedures

Chapter 0240-02-03
Student Conduct and Disciplinary Sanctions

Amendments

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

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

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

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

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

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

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

- (2) Contested Case Procedure: All cases which may result in: (a) suspension or expulsion of a student from the institution for disciplinary reasons, or (b) revocation of registration of a student organization, are subject to the contested case provisions of the Uniform Administrative Procedures Act (UAPA), T.C.A. §§ 4-5-301 et seq., and shall be processed in accord with the Uniform Contested Case procedures adopted by the Board of Regents, unless the student or organization, after receiving written notice, waives those procedures and elects to have the case disposed of in accord with institutional procedures or waives all right to contest the case under any procedure. These procedures shall be described in the institution's policy.
 - (a) For cases which may result in Interim Involuntary Withdrawal or Suspension, the institution must incorporate the guidelines set forth herein at (6) in its decision-making processes.

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

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

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

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

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

I certify that this is an accurate and complete copy of an emergency rule(s), lawfully promulgated and adopted.

Date: July 22, 2015

Signature: Mary H. Moody

Name of Officer: Mary Moody

Title of Officer: General Counsel & Board Secretary



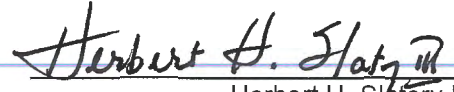
Subscribed and sworn to before me on: July 22, 2015

Notary Public Signature: [Signature]

My commission expires on: 2-6-17

Tennessee Board of Regents Rules
0240-02-03 Student Conduct and Disciplinary Sanctions
0240-02-03-.02 Disciplinary Offenses
0240-02-03-.04 Disciplinary Sanctions
0240-02-03-.06 Disciplinary Procedures

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


Herbert H. Slatery III
Attorney General and Reporter
8/5/2015
Date

Department of State Use Only

Filed with the Department of State on: 8/18/15
Effective for: 180 *days
Effective through: 2/14/16

* Emergency rule(s) may be effective for up to 180 days from the date of filing.


Tre Hargett
Secretary of State

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PUBLICATIONS

Impact on Local Governments

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

No Impact on Local Governments.

Additional Information Required by Joint Government Operations Committee

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

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

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

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

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

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

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

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

None

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

None

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

Mary G. Moody
General Counsel
Tennessee Board of Regents

Donald R. Ungurait
Associate General Counsel
Tennessee Board of Regents

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

Mary G. Moody
General Counsel
Tennessee Board of Regents

Donald R. Ungurait
Associate General Counsel
Tennessee Board of Regents

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

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

None

RULES
OF
TENNESSEE BOARD OF REGENTS

CHAPTER 0240-02-03
STUDENT CONDUCT AND DISCIPLINARY SANCTIONS

0240-02-03-.02 DISCIPLINARY OFFENSES.

- (2) (a) Threatening or Disruptive Conduct ~~Dangerous to Self or Others~~. Any conduct, or attempted conduct, which poses a threat to the safety of others or where the student's behavior is disruptive of the institution's learning environment; ~~constitutes a danger to any person's health, safety, or personal well-being, including, but not limited to, the following:~~

~~1. Physical and/or verbal abuse;~~

~~2. Threats and/or intimidation;~~

~~3. Harm inflicted on self;~~

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

0240-02-03-.04 DISCIPLINARY SANCTIONS.

- (2) Definition of Sections:

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

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

0240-02-03-.06 DISCIPLINARY PROCEDURES.

- (2) Contested Case Procedure: All cases which may result in: (a) suspension or expulsion of a student, ~~or student organization~~, from the institution for disciplinary reasons, or (b) revocation of registration of a student organization, are subject to the contested case provisions of the Tennessee Uniform Administrative Procedures Act (TUAPA), T.C.A. §§ 4-5-301 et seq., and shall be processed in accord with the Uniform Contested Case procedures adopted by the Board of Regents, unless the student or organization, after receiving written notice, waives those procedures and elects to have the case disposed

of in accord with institutional procedures or waives all right to contest the case under any procedure. These procedures shall be described in the institution's policy.

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

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

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

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

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

(d) If exigent circumstances warrant the immediate removal of a student from the institution, the student will receive, at a minimum, notice and an initial opportunity to present evidence immediately after being placed on involuntary withdrawal and the opportunity to initiate full due process within thirty (30) days of the removal.

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