

Proposed Rules
of
The Tennessee Board of Regents
State University and Community College System of Tennessee
Austin Peay State University

Chapter 0240-03-01
Student Disciplinary Rules

Presented herein are proposed amendments of the Tennessee Board of Regents submitted pursuant to Tennessee Code Annotated § 4-5-202 in lieu of a rulemaking hearing. It is the intent of the Tennessee Board of Regents to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within thirty (30) days of the publication date of the issue of the Tennessee Administrative Register in which the proposed amendments are published. Such petition to be effective must be filed in Suite 350 of the Genesco Park Building located at 1415 Murfreesboro Road, Nashville, TN 37217 and in the Department of State, Eighth Floor, Tennessee Tower, William R. Snodgrass Building, 312 Eighth Avenue, North, Nashville, TN 37243, and must be signed by twenty-five (25) persons who will be affected by the rules, or submitted by a municipality which will be affected by the rule, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly.

For a copy of this proposed rule, contact: Mary M. Slater, 1415 Murfreesboro Road, Suite 350, Nashville, Tennessee 37217, Tennessee Board of Regents, 615-366-4437.

The text of the proposed amendments is as follows:

Amendments

1. Paragraph (2) of Rule 0240-03-01-.01 Institution Policy Statement is amended by deleting the text of the paragraph and substituting the following language, so that, as amended, paragraph (2) shall read:

- (2) Pursuant to this authority, the University has developed the following Regulations known as the Code of Student Conduct intended to govern student conduct on the Austin Peay State University campus. In addition, students are subject to all federal, state and local laws and ordinances. If a student's violation of such laws or ordinances also adversely affects the institution's pursuit of its educational objectives, the institution may enforce its own regulations regardless of any proceedings instituted by other authorities. Conversely, violation of any section of these Regulations may subject a student to disciplinary measures by the institution whether or not such conduct simultaneously violates state, local or national laws.

Authority: T.C.A. § 49-8-203.

2. Subparagraph (b) of paragraph (2) of Rule 0240-03-01-.02 Disciplinary Offenses is amended by deleting the text of the subparagraph and substituting the following language, so that, as amended, subparagraph (b) shall read:

- (b) Hazing. Violations of this section include any act of hazing, on or off the Austin Peay State University campus or University controlled property, by an Austin Peay State University individual, group of individuals or registered student organization. Hazing means any intentional or reckless act on or off the property of any higher education institution by one (1) student acting alone or with others which is directed against any other student that endangers the mental or physical health or safety of that student, or which induces or coerces a student to endanger such student's mental or physical health or safety. Hazing does not include customary athletic events or similar contests or competitions and is limited to those actions taken and situations created in connection with initiation into or affiliation with any organizations.

3. Paragraph (2) of Rule 0240-03-01-.02 Disciplinary Offenses is further amended by adding a new subparagraph (c) and relettering the subsequent subparagraphs accordingly. New subparagraph (c) shall read:

- (c) Harassment and Privacy Intrusion. Any act of harassment by an individual or group against a student, faculty member or another group is prohibited. Harassment and privacy intrusion shall include, but not be limited to, insults, heckling, verbal abuse, threats of physical abuse, unwanted suggestions of a sexual nature, repeated teasing or annoyance to another, repeated unsolicited phone calls, text messages made with the intent to harass, other actions considered disturbing to others, any harassing virtual communication such as harassing emails or character-assassination on the internet, or inappropriate use of electronic devices that violates the privacy of another individual.

4. Subparagraph (d) (formerly (c)) of paragraph (2) of Rule 0240-03-01-.02 Disciplinary Offenses is further amended by deleting the text of the subparagraph and substituting the following language, so that, as amended, subparagraph (d) shall read:

- (d) Disorderly Conduct. Any individual or group 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 verbal abuse, non-verbal gestures and inappropriate behavior resulting from the use of or being under the influence of alcohol or drugs), etc.

5. Subparagraph (f) (formerly (e)) of paragraph (2) of Rule 0240-03-01-.02 Disciplinary Offenses is further amended by deleting the text of the subparagraph and substituting the following language, so that, as amended, subparagraph (f) shall read:

- (f) Misuse of or Damage to Property. Any act of misuse, vandalism, malicious or unwarranted damage, destruction, defacing, disfiguring or unauthorized use of property belonging to the University or property being used, rented or leased by a student, group of students or officially registered student organization not owned by the University.

6. Subparagraph (g) (formerly (f)) or paragraph (2) of Rule 0240-03-01-.02 Disciplinary Offenses is further amended by deleting the text of the subparagraph and substituting the following language, so that, as amended, subparagraph (g) shall read:

- (g) Theft, Misappropriation or Unauthorized Sale. Any act of theft, misappropriation or unauthorized possession, use or sale of University property or any such act against a member or organization of the University community or a guest of the University.

7. Subparagraphs (k) (formerly (j)) through (m) (formerly (l)) of paragraph (2) of Rule 0240-3-1-.02 Disciplinary Offenses are further amended by deleting the text of the subparagraphs and substituting the following language, so that, as amended, subparagraphs (k) through (m) shall read:

- (k) Alcoholic Beverages. The use and/or possession of alcoholic beverages and/or public intoxication on University-owned or controlled property, other violations of any local ordinance or state or federal law concerning alcoholic beverages, on or off campus, or a violation of the terms of the Austin Peay State University Drug-Free Policy Statement. 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 national laws concerning alcoholic beverages and must follow the University's Risk Management Guidelines for Student Organizations.
- (l) Drugs. The unlawful possession or use of any drug, controlled substance or drug paraphernalia (including any prescription drug, stimulant, depressant, narcotic, hallucinogenic drug or substance, or marijuana), or the sale or distribution of any such drug or controlled substance, or a violation of any terms of the Austin Peay State University Drug-Free Policy Statement.
- (m) Gambling. Participation in any gambling or gambling-related activities on campus or on University controlled property or property being used, rented or leased by a student, group of students or officially registered student organization not owned by the University that have not been approved and/or administered in accordance with the laws and regulations of the State of Tennessee. Any permitted gambling or gambling-related activity must also be operated under the auspices of the University's foundation.

8. Subparagraph (w) of paragraph (2) of Rule 0240-03-01-.02 Disciplinary Offenses is further amended by deleting the text of the subparagraph and substituting the following language, so that, as amended, subparagraph (w) shall read:

- (w) Tobacco. Smoking in all University buildings, grounds and state-owned vehicles is prohibited (except in otherwise designated areas as provided in APSU policy 99:022). Regardless of whether classes are in session, smoking is prohibited in all buildings, grounds and

state-owned vehicles twenty-four (24) hours a day, year round. Students who want to use smoke-free tobacco products may do so thirty (30) feet from each building exit and entrances. Smoke-free tobacco product use is prohibited in University buildings and state-owned vehicles. (See APSU policy 99:022.)

9. Subparagraph (y) of paragraph (2) of Rule 0240-03-01-.02 Disciplinary Offenses is further amended by deleting the text of the subparagraph and substituting the following language, so that, as amended, subparagraph (y) shall read:

- (y) Filing a False Complaint or Statement. Any behavior whereby a student knowingly submits a false complaint or statement alleging a violation of these regulations by a student or organization or university employee.

Authority: T.C.A. § 49-8-203.

10. Paragraph (5) of Rule 0240-03-01-.03 Academic and Classroom Misconduct is amended by deleting the text of the paragraph and substituting the following language, so that, as amended, paragraphs (5) shall read:

- (5) Class attendance and class punctuality requirements are contracted between the faculty and the students through specific expectations for attendance and punctuality and specific consequences that are outlined by individual faculty members in the printed 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 students are unable to make immediate contact with faculty, the student may contact the Central 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. § 49-8-203.

11. Subparagraph (b) of paragraph (2) of Rule 0240-03-01-.04 Disciplinary Sanctions is amended by deleting the text of the subparagraph and substituting the following language, so that, as amended, subparagraph (b) shall read:

- (b) Reprimand. A written reprimand or censure may be given to any student or organization whose conduct violates any part of these regulations. Such a reprimand does not restrict the student or student organization in any way but does have important consequences. It signifies to the student or student organization that each is being given another chance to conduct themselves as a proper member

of the University community, but that any further violation may result in more serious penalties.

12. Subparagraphs (d) through (i) of paragraph (2) of Rule 0240-03-01-.04 Disciplinary Sanctions are further amended by deleting the text of the subparagraphs and substituting the following language, so that, as amended, subparagraphs (d) through (i) shall read:

- (d) University Probation. Continued enrollment of a student on probation may be conditioned upon adherence to these regulations. Any student placed on probation will be notified of such in writing and will also be notified of the terms and length of probation. Probation may include restrictions upon the extracurricular activities of a student. Parents or legal guardians may be notified. Any conduct in violation of these regulations while on probationary status may result in the imposition of a more serious disciplinary sanction.
- (e) Suspension. If a student is suspended, he or she is separated from the University or from a class for a stated period of time with conditions for readmission stated in the notice of suspension. Parents or legal guardians may be notified.
- (f) Expulsion. Expulsion entails a permanent separation from the University. The imposition of this sanction is a permanent bar to the student's readmission to the University. Parents or legal guardians may be notified.
- (g) Interim or Summary Suspension. Though as a general rule, the status of a student accused of violations of these regulations should not be altered until a final determination has been made in regard to the charges against him or her, summary suspension may be imposed upon a finding by the appropriate University 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 University community or its guests, destruction of property, or substantial disruption of classroom or other campus activities. A final determination of the charges against any student summarily suspended shall be made through appropriate hearing procedures within ten (10) class days of such suspension during which time the accused shall forfeit all rights and privileges as a student of the University. Parents or legal guardians may be notified.
- (h) Housing Probation. A resident 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 Regulations and the Housing Contract. Any resident placed on probation shall be notified in writing of the terms and length of the probation. Parents or legal guardians may be notified. Any conduct of a similar or more serious nature in violation of the probation shall result in suspension from housing.

- (i) Housing Suspension and Forfeiture. A resident 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 resident shall be required to forfeit housing fees (including any unused portion thereof and the Housing deposit). A suspended resident must vacate the housing unit within forty-eight (48) hours. Housing suspension shall remain a part of the student's disciplinary record. Parents or legal guardians may be notified.

13. Subparagraphs (l) and (m) of paragraph (2) of Rule 0240-03-01-.04 Disciplinary Sanctions are further amended by deleting the text of the subparagraphs and substituting the following language, so that, as amended, subparagraphs (l) and (m) shall read:

- (l) Interim or Summary Suspension from Campus Housing. Though as a general rule, the status of a student accused of violations of these regulations should not be altered until a final determination has been made in regard to the charges against him or her, interim suspension from campus housing may be imposed upon a finding by the appropriate University official that the continued presence of the accused in Austin Peay State University housing constitutes an immediate threat to the physical safety and well-being of the accused, or of any other member of the University community or its guests, or the destruction of property. A final determination of the charges against any student summarily suspended from campus housing shall be made through appropriate hearing procedures within seven (7) class days of such housing suspension during which time the accused shall forfeit the right to reside in or visit campus housing facilities. The accused shall be permitted to attend classes during this interim period. Parents or legal guardians may be notified.
- (m) Referral for Intervention, Assessment and/or Counseling. The student is mandated to visit the appropriate University official for an initial intervention and assessment which may be followed by required participation and a prescribed plan of action or treatment plan. Parents or legal guardians may be notified.

14. Paragraph (2) of Rule 0240-03-01-.04 Disciplinary Sanctions is further amended by adding a new subparagraph (o) which shall read:

- (o) Letter of Apology. A student or student organization may be required to write a letter of apology to the University or its guests, another student or student organization, faculty or staff member, or any other constituent affected by the behavior for which the student or student organization has been found responsible. The letter shall be written and sent within seven (7) class days of notification of sanction and copied to the appropriate hearing body or official.

15. Paragraph (1) (including the subparagraphs and parts) of Rule 0240-03-01-.05 Disciplinary Procedures are amended by deleting the text of the paragraph and substituting the following language, so that, as amended, paragraph (1) shall read:

- (1) Alternative Hearing Procedures.
- (a) Procedures Conforming to the Tennessee Uniform Administrative Procedures Act. All cases which may result in (i) suspension or expulsion of a student from the University for disciplinary 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 Tennessee Uniform Administrative Procedures Act (TUAPA) and shall be processed in accordance with the uniform contested case procedures adopted by the Board of Regents, unless the student or student organization waives those procedures in writing and elects to have his or her case heard by the University Hearing Board.
 - (b) Cases which are not subject to the contested case procedures under the Tennessee 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 Institutional Hearing Procedures. The University has established two alternative Institutional Hearing Procedures:
 - 1. A hearing conducted by one 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 disciplinary hearings will be conducted by appropriate Student Affairs Administrators, except those subject to TUAPA procedures as selected by the accused student or student organization.)
 - (c) Cases which are not subject to the contested case procedures under the Tennessee Uniform Administrative Procedures Act and which involve very minor first offenses by students or student organizations may be discussed informally with students or student organizations. In such cases, no formal record will be maintained in the judicial records of the University. The University official responsible for conducting this Informal Disciplinary Discussion 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 Disciplinary Record.
 - (d) Jurisdiction of Cases to be Heard by Dean of Students:

1. All formal cases involving incidents which occur in University 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 for Student Affairs, 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 Senior Student Affairs Officer shall assign one or more Student Affairs Administrators to hear the case.

16. Subparagraph (a) (excluding parts 1. through 4.) of paragraph (2) of Rule 0240-03-01-.05 Disciplinary Procedures is further amended by deleting the text of the subparagraph and substituting the following language, so that, as amended, subparagraph (a) shall read:

- (a) A student accused of violating University disciplinary rules shall be called before the appropriate Student Affairs Administrator for a preliminary conference at which the student will be orally advised of the following:

17. Subparagraph (e) of paragraph (3) of Rule 0240-03-01-.05 Disciplinary Procedures is further amended by deleting the text of the subparagraph and substituting the following language, so that, as amended, subparagraph (e) shall read:

- (e) The right to a statement of the possible sanctions that may be imposed as a result of a finding of a violation of the Code.

18. Subparagraph (a) of paragraph (4) of Rule 0240-03-01-.05 Disciplinary Procedures is further amended by deleting the text of the subparagraph and substituting the following language, so that, as amended, subparagraph (a) shall read:

- (a) Hearings before a Student Affairs Administrator. The appropriate Student Affairs Administrator shall act as hearing officer in the hearing, shall determine the student's innocence or guilt and shall apply sanctions as appropriate.

19. Part 2. of subparagraph (b) of paragraph (4) of Rule 0240-03-01-.05 Disciplinary Procedures is further amended by deleting the text of the part and substituting the following language, so that, as amended, part 2. shall read:

2. The Chair of the Board shall be appointed by the University president.

20. Part 4. of subparagraph (b) of paragraph (4) of Rule 0240-03-01-.05 Disciplinary Procedures is further amended by deleting the text of the part and substituting the following language, so that, as amended, part 4. shall read:

4. The Dean of Students shall train and advise all regular and alternate members of this Board in appropriate disciplinary procedures.

21. Subparagraphs (a) and (b) of paragraph (5) of Rule 0240-03-01-.05 Disciplinary Procedures are further amended by deleting the text of the subparagraphs and substituting the following language, so that, as amended, subparagraphs (a) and (b) shall read:

- (a) Any sanction imposed as the result of a hearing conducted under the Code shall be effective immediately upon notification of the student unless the hearing authority deems a stay of such sanction desirable pending appeal.
- (b) In any case where the decision results in separation from the University, the decision shall be reviewed by the Senior Student Affairs Officer prior to notifying the Office of the Registrar and the academic department in which the student has been enrolled.

22. Subparagraph (d) of paragraph (5) of Rule 0240-03-01-.05 Disciplinary Procedures is further amended by deleting the text of the subparagraph and substituting the following language, so that, as amended, subparagraph (d) shall read:

- (d) An appeal in writing setting forth grounds for the appeal and addressed to the appropriate appellate authority (as outlined in the next section) must be received in the Office of the Senior Student Affairs Officer within three (3) class days after the student is notified of the sanction imposed at any hearing or appellate level.

23. Subparagraphs (a) and (b) of paragraph (6) of Rule 0240-03-01-.05 Disciplinary Procedures are further amended by deleting the text of the subparagraphs and substituting the following language, so that, as amended, subparagraphs (a) and (b) shall read:

- (a) A decision by a Student Affairs Administrator may be appealed to the Senior Student Affairs Officer.
- (b) A decision by the University Hearing Board may be appealed to the Senior Student Affairs Officer, or designee.

24. Paragraph (7) (excluding subparagraphs (a) through (d)) of Rule 0240-03-01-.05 Disciplinary Procedures is further amended by deleting the text of the paragraph and substituting the following language, so that, as amended, paragraph (7) shall read:

- (7) Appellate Authority. The Senior Student Affairs Officer, or designee, shall have the authority to do any of the following upon review of an appeal:

25. Subparagraph (c) (excluding parts 1. through 4.) of paragraph (8) of Rule 0240-03-01-.05 Disciplinary Procedures is further amended by deleting the text of the subparagraph and substituting the following language, so that, as amended, subparagraph (c) shall read:

- (c) Sanctions Against Student Organizations. Any registered student organization may be given a reprimand, placed on probation, suspension, or restriction or have its registration withdrawn by the Dean of Students or by a Student Affairs Administrator appointed by the Senior Student Affairs Officer. Such actions may be taken after having a hearing conducted in accordance with the procedures outlined in this document for disciplinary procedures. In the case of Withdrawal of Registration of an organization, the procedures to be used will be the contested case provisions of the Tennessee Uniform Administrative Procedures Act, unless those provisions have been waived in writing by an authorized representative of the student organization. Such action may be taken for any one of the following reasons:

Authority: T.C.A. § 49-8-203.

The proposed rules set out herein were properly filed in the Department of State on the 20th day of September, 2007, and pursuant to the instructions set out above, and in the absence of the filing of an appropriate petition calling for a rulemaking hearing, will become effective on the 28th day of January, 2008. (FS 09-09-07; DBID 2679)