

MIDDLE TENNESSEE STATE UNIVERSITY
POLICIES AND PROCEDURES MANUAL

POLICY NO: I:01:19

DATE: September 19, 2003

SUPERSEDES POLICY NO: I:01:19

DATED: December 16, 2002

SUBJECT: Procedures for Personnel Cases Subject to the Tennessee Uniform Administrative Procedures Act

APPROVED: Sidney A. McPhee, President_____

The attached procedures have been approved by the Chancellor to be followed by each institution. These procedures are transmitted herewith as a policy statement for Middle Tennessee State University.

PROCEDURES FOR CASES INVOLVING
PERSONNEL RELATED MATTERS OF
SYSTEM INSTITUTIONS
SUBJECT TO THE TENNESSEE UNIFORM
ADMINISTRATIVE PROCEDURE ACT

1. Purpose

The purpose of these procedures is to provide a basis for uniform procedures to be used by institutions and technology centers governed by the Tennessee Board of Regents, for the hearing of cases which may be subject to the Tennessee Uniform Administrative Procedures Act, Title 4, Chapter 5, Tennessee Code Annotated (hereinafter referred to as Act).

2. Scope

These procedures may be applicable in cases involving:

- (1) suspension of employees for cause, or termination of employees when the termination is in violation of the employee's contract, e.g., termination prior to the expiration of the contract term;
- (2) suspension or expulsion of a student, or revocation of recognition of a student organization, for misconduct or disciplinary reasons;
- (3) support staff employees who are demoted, suspended without pay, or terminated and elect to pursue a TUAPA hearing instead of an employee panel hearing as the final step of the grievance process; and
- (4) such other cases as may be designated by the Chancellor of the State Board of Regents or President of the institution of the school. These procedures are not applicable to termination of faculty for adequate cause which are subject to the provisions of Chapter 839 of the Public Acts of 1976. Prior to the initiation of any hearing pursuant to these

procedures, the institution or school shall contact the Office of General Counsel for advice on the applicability of these procedures, and for possible assistance in the hearing of the case.

3. Authority of the President and Director

- (a) The President of each institution and director of each technology center is responsible for implementation of these procedures, and have the final decision making authority in any proceeding subject to these procedures.
- (b) The authority and responsibilities of the President set forth herein may be delegated by him or her to individual designees who are members of the staff of the institution or school. All references herein to the President include any designee of the President. The President shall be responsible for any action taken under a delegation of his or her authority.

4. Hearing Directors

- (a) The President of each institution shall designate a member of the staff to be responsible for the coordination and administration of these procedures, who shall hereinafter be referred to as the "director" but who may be given any appropriate title as determined by the President. The President may designate as many assistants to the director as may be necessary to implement these procedures, and may authorize each assistant to exercise the same rules and responsibilities as the "director".
- (b) The "director" shall investigate all cases which may be subject to these procedures, and may recommend to the President whether a hearing shall be commenced in any case.
- (c) In all cases which proceed to a hearing under these procedures, the "director" shall be responsible for notifying the Office of General Counsel of the case, initiating the hearing procedures, sending all appropriate notices, making all arrangements for the hearing and marshalling and presenting evidence at the hearing except in cases where the institution will be represented by a member of the staff of the Office of General Counsel or any other designated person. The "director" shall provide all parties with a copy of these procedures.

5. Selection of Hearing Officer or Hearing Committee

- (a) In any case where a hearing pursuant to these procedures is required, the President shall determine, in his or her discretion, whether the hearing shall be held before a hearing officer or a hearing committee.
- (b) Hearing officers shall normally be appointed by the President from the administrative or professional staff of the institution. Upon request from the President, the Chancellor may appoint a hearing officer in any case, either from within or without the institution. Contested cases may also be conducted by an administrative judge from the Administrative Procedures Division of the Office of the Secretary of State. An institution may submit a request for an administrative judge to the Office of General Counsel.

- (c) A hearing committee may be appointed by the President from the administrative, professional staff and/or appropriate employees or students at the institution or school. The person appointed as chairperson of the committee shall be deemed to be the hearing officer for purposes of presiding at the hearing.
- (d) A "director" may not be appointed to serve as a hearing officer.

6. Preliminary Conference

- (a) Whenever practical the "director" should hold a preliminary conference with the person* involved and advise him or her orally in his or her presence of the reason for the proposed action. If the action to be taken is such that these procedures are or may be applicable, the person shall be advised of the opportunity to elect the procedures pursuant to which a hearing will be provided as hereinafter set forth.
- (b) As a result of any preliminary conference, any person who may otherwise be entitled to a hearing pursuant to the act may waive such a hearing and accept the decision proposed by the institution. A waiver may be made verbally or in writing, and if made in writing, it should be signed by the employee and shall state the matter involved and the decision acquiesced in, and should expressly state that the procedures for contested cases under the act are knowingly and voluntarily waived by the person.
- (c) Following a preliminary conference, or prior to commencement of any hearing under these procedures, where any issues of fact or cause and effect are contested by the person, he or she shall be advised of hearing procedures available under the Act and of the established institutional procedures available for resolution of the matter in question, and shall be given the opportunity to elect the procedures pursuant to which the matter will be heard. Where the person elects to proceed under the established institutional procedures for resolution of the matter, the election should be in writing and signed by the person, and should expressly waive the procedures available under the Act as to the matter in question.

7. Suspensions Pending a Hearing

- (a) A student or employee charged with violations of policies, rules or regulations of the institution may be suspended by the President pending a hearing subject to these or alternate procedures when the person's presence poses a danger to persons or property or a threat of destruction to the academic or operational processes of the institution.
- (b) In any case of immediate suspension, the person shall be given an opportunity at the time of the decision or immediately thereafter to contest the suspension, and if there are disputed issues of fact or cause and effect, the person shall be provided a hearing on the suspension as soon as possible at which the person may cross-examine his or her accuser, present witnesses on his or her behalf, and be represented by an attorney. Thereafter, whether the suspension is upheld or revoked, the case shall proceed pursuant to these procedures.

*"Person" as used herein includes both individuals and organizations.

8. Notice of Hearing and Response

- (a) Prior to the hearing all parties shall be afforded reasonable notice.
- (b) This notice shall include:
 - (1) A statement of the time, place, nature of the hearing, and the right to be represented by counsel;
 - (2) A statement of the legal authority and jurisdiction under which the hearing is being held, including a reference to the particular sections of the statute or rules involved; and
 - (3) A short and plain statement of the matters asserted. If the institution or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon timely written application a more definite and detailed statement shall be furnished ten (10) days prior to the time set for the hearing.
- (c) The party charged shall respond in writing within five (5) days (excluding Saturdays and Sundays) of the service of the notice of hearing which response may generally admit or deny all allegations, or may admit in part and deny in part the allegations made in the notice, and may set forth relevant issues of fact. If the party fails to respond he or she will be subject to the default provisions found in Section 14. If the party charged elects to be represented by an attorney at the hearing, the response must so indicate in writing and the name and office address of the attorney must be provided. Failure to provide written notice of the name and address of counsel in the response may result in the continuance of the hearing, if requested by the director.

9. Time for Hearings

- (a) Hearings shall normally be held within twenty (20) calendar days of the date of the notice of hearing.
- (b) Extensions of time may be granted upon motion by either party in the event pre-hearing discovery will not be completed by the designated time of the hearing, provided that the parties have proceeded with discovery with due diligence.
- (c) Other than as required for the convenience of the hearing officer extensions of time for hearings for reasons other than discovery shall be authorized only for good and compelling reasons.

10. Pre-Hearing Conference

- (a) In any case set for hearing the hearing officer assigned to hear the case upon their own motion or upon the motion of one of the parties or their authorized representative, may direct the parties and/or the attorneys for the parties to appear before him or her for a pre-hearing conference.
- (b) During the pre-hearing conference the parties will consider the following:
 - (1) The simplification of issues;

- (2) The necessity or desirability of amendments to the pleadings;
- (3) The possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof;
- (4) The limitation of the number of witnesses;
- (5) Such other matters as may aid in the disposition of the case.

The hearing officer shall make an order which recites the action taken at the conference, the amendments allowed to the pleadings, and the agreements made by the parties as to any of the matters considered, and which limits the issues for hearing to those not disposed of by admissions or agreements of the parties, and such order when entered controls the subsequent course of the action, unless modified at the hearing to prevent injustice.

- (c) Upon reasonable notice to all parties the hearing officer may convene a hearing or convert a pre-hearing conference to a hearing, to be conducted by the hearing officer sitting alone, to consider argument and/or evidence on any question of law.
- (d) If, a pre-hearing conference is not held, the hearing officer may issue a pre-hearing order, based on the pleadings, to regulate the conduct of the proceedings.

11. Procedure in Preparation for Hearing

(a) Subpoenas and Discovery

- (1) The hearing officer at the request of any party shall issue subpoenas, effect discovery, and issue protective orders. The hearing officer shall decide any objection relating to discovery under these rules or the Tennessee Rules of Civil Procedure. Witnesses under subpoena shall be entitled to the same fees as are now or may hereafter be provided for witnesses in civil actions in the circuit court and, unless otherwise provided by law or by action of the institution, the party requesting the subpoenas shall bear the cost of paying fees to the witnesses subpoenaed.
- (2) All requests for subpoenas and all depositions and interrogatories shall be limited to matters which are not privileged and which are relevant to the proceeding. Upon motion by a party or by a person from whom discovery is sought, and for good cause shown, the hearing officer may enter any order which justice requires to protect a person or party from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following: (I) that the discovery not be had; (II) that the discovery may be had only on specified terms and conditions; (III) that the discovery may be had only by an alternative method; (IV) that the scope of discovery be limited to certain matters; or (V) that information be submitted under seal to be opened only by orders of the hearing officer.

(b) Depositions and Interrogatories

Any party to the proceeding may take depositions of parties or witnesses or may serve interrogatories upon any party, within or without the state, in the same manner as provided by law for the taking of depositions and interrogatories in a civil action.

(c) Admissions

Any party to the proceeding may serve upon any other party a written request for the admission by the latter of the genuineness of any relevant documents described in and exhibited to the request or of the truth of any relevant matters of fact set forth in the request. Each of the matters of which an admission is requested shall be deemed admitted unless within a period designed in the request, not less than thirty (30) calendar days after service thereof, or within such shorter or longer time as the hearing officer may allow on motion and notice, the party to whom the request is directed serves upon the party requesting the admission either (1) a sworn statement denying specifically the matters of which an admission is requested or setting forth in detail the reasons why he or she cannot truthfully admit or deny those matters or (2) written objections on the ground that some or all of the requested admissions are privileged or irrelevant or that the request is otherwise improper in whole or in part, together with a notice of hearing the objections at the earliest practicable time. If written objections to a part of the request are made, the remainder of the request shall be answered within the period designated. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party deny only part or a qualification of a matter of which an admission is requested, he or she shall specify so much of it as is true and deny only the remainder.

(d) Review of Institutional Files

Any party to a contested case shall have the right to inspect the files of the institution with respect to the matter and to copy there from, except that records may not be inspected the confidentiality of which is protected by law.

12. Evidence

- (a) The institution shall admit and give probative effect to evidence admissible in a court and when necessary to ascertain facts not reasonably susceptible to proof under the rules of court, evidence not admissible there under may be admitted if it is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs. The institution shall give effect to the rules of privilege recognized by law and to Board of Regents rules protecting the confidentiality of certain records and shall exclude evidence which in its judgment is irrelevant, immaterial, or unduly repetitious.
- (b) At any time not less than ten (10) days prior to a hearing or a continued hearing, any party shall deliver to the opposing party a copy of any affidavit which he proposes to introduce in evidence, together with a notice in the form provided in subdivision (d) which follows. Unless the opposing party within seven (7) days after delivery, delivers to the proponent a request to cross-examine an affiant, his right to cross-examination of such affiant is waived and the affidavit, if introduced in evidence, shall be given the same effect as if the affiant had testified orally. If an opportunity to cross-examine an affiant is not afforded after a proper request is made as herein provided, the affidavit shall not be admitted into evidence. Delivery for purposes of this section shall mean actual receipt.
- (c) The hearing officer may admit affidavits not submitted in accordance with this section where necessary to prevent injustice.

- (d) The notice referred to in subdivision (b) shall contain the following information and be substantially in the following form:

The accompanying affidavit of (here insert name of affiant) will be introduced as evidence at the hearing in (here insert title of proceeding). (Here insert name of affiant) will not be called to testify orally and you will not be entitled to question him unless you notify (here insert name of the proponent or his attorney) at (here insert address) that you wish to cross-examine him. To be effective your request must be mailed or delivered to (here insert name of proponent or his attorney) on or before (here insert a date seven (7) days after the date of mailing or delivering the affidavit to the opposing party).

- (e) Documentary evidence otherwise admissible may be received in the form of copies or excerpts, or by incorporation by reference to material already on file with the agency. Upon request, parties shall be given an opportunity to compare the copy with the original, if reasonably available.
- (f) Official notice may be taken of:
- (1) Any fact that could be judicially introduced in the courts of this state;
 - (2) The record of other proceedings before the agency;
 - (3) Technical or scientific matters within the institution's or school's specialized knowledge; and
 - (4) Codes or standards that have been adopted by an agency of the United States, of this state or any other state, or by a nationally recognized organization or association.

Parties must be notified before or during the hearing, or before the issuance of any initial or final order that is based in whole or in part on facts or material noticed, of the specific facts or material noticed and the source thereof, including any staff memoranda and data, and be afforded an opportunity to contest and rebut the facts or material so noticed.

13. Pleadings, Briefs, Motions Service

- (a) The hearing officer, at appropriate stages of the proceedings, shall give all parties full opportunity to file pleadings, motions, objections and offers of settlement.
- (b) The hearing officer, at appropriate stages of the proceedings, may give all parties full opportunity to file briefs, proposed findings of fact and conclusions of law, and proposed initial or final orders.
- (c) A party shall serve copies of any filed item on all parties, by mail or any other means prescribed by the institution.

14. Default

- (a) If a party fails to attend or participate in a pre-hearing conference, hearing or other stage of a hearing, the hearing officer, hearing the case alone or with committee may hold the party in default and either adjourn the proceedings or conduct them without the participation of that

party, having due regard for the interest of justice and the orderly and prompt conduct of the proceedings.

- (b) If the proceedings are conducted without the participation of the party in default the hearing officer, hearing the case alone, shall include in the final order a written notice of default, otherwise, the Committee sitting with the hearing officer, shall include such written notice of default in the final order. If the proceedings are adjourned and not conducted the hearing officer, hearing the case alone, may render an initial default order, otherwise the Committee sitting with the hearing officer, may render a final default order. All default orders and notices of default in default orders shall include a written statement of the grounds for the default.
- (c) A party may petition to have a default set aside by filing timely petition for reconsideration.
- (d) If a party fails to file a timely petition for reconsideration or the petition is not granted, the hearing officer, sitting alone, or the Committee sitting with the hearing officer, shall conduct any further proceedings necessary to complete the contested case without the participation of the defaulting party and shall determine all issues in the adjudication, including those affecting the defaulting party.

15. Intervention

- (a) The hearing officer shall grant one or more petitions for intervention if:
 - (1) The petition is submitted in writing to the hearing officer, with copies mailed to all parties named in the notice of the hearing, at least seven (7) days before the hearing;
 - (2) The petition states facts demonstrating that the petitioner' s legal right, duties, privileges, immunities, or other legal interest may be determined in the proceeding or that the petitioner qualifies as an intervenor under any provision of law; and
 - (3) The hearing officer determines that the interests of justice and the orderly and prompt conduct of the proceedings shall not be impaired by allowing the intervention.
- (b) The Committee may grant one or more petitions for intervention at any time, upon determining that the intervention sought is in the interest of justice and shall not impair the orderly and prompt conduct of the proceedings.
- (c) If a petitioner qualifies for intervention, the hearing officer may impose conditions upon the intervenor' s participation in the proceedings, either at the time that intervention is granted or at any subsequent time.
- (d) The hearing officer or Committee, at least twenty-four (24) hours before the hearing, shall render an order granting or denying each pending petition for intervention, specifying any conditions, and briefly stating the reasons for the order. The hearing officer or Committee may modify the order at any time, stating the reasons for the modification. The hearing officer or Committee shall promptly give notice of an order granting, denying, or modifying intervention to the petitioner for intervention and to all parties.

16. Disqualification and Substitution Hearing Officers and Committee Members

- (a) Any hearing officer or Committee member shall be subject to disqualification for bias, prejudice, interest, or any other cause provided in this policy or for any cause for which a judge may be disqualified.
- (b) Any party may petition for the disqualification of hearing officer or a Committee member promptly after receipt of notice indicating that the individual may serve or, if later, promptly upon discovering facts establishing grounds for disqualification.
- (c) A party petitioning for the disqualification of an individual shall not be allowed to question the individual concerning the grounds for disqualification at the hearing or by deposition unless ordered by the hearing officer conducting the hearing and agreed to by the individual.
- (d) The individual whose disqualification is requested shall determine whether to grant the petition, stating facts and reasons for the determination.
- (e) If a substitute is required for an individual who becomes unavailable as a result of disqualification or any other reason, the substitute shall be appointed by the President of the institution .
- (f) Any action taken by a duly appointed substitute for an unavailable individual shall be as effective as if taken by the unavailable individual.

17. Separation of Functions

- (a) A person who has served as an investigator, prosecutor or advocate in a case may not serve as a hearing officer or assist or advise a hearing officer in the same proceeding.
- (b) A person who is subject to the authority, direction, or discretion of one who has served as investigator, prosecutor, or advocate in a contested case may not serve as a hearing officer or assist or advise a hearing officer in the same proceeding.
- (c) A person who has participated in a determination of probable cause or other equivalent preliminary determination in a case may not serve as a hearing officer or assist or advise a hearing officer in the same proceeding.
- (d) A person may serve as a hearing officer at successive stages of the same case, unless a party demonstrates grounds for disqualification.
- (e) A person who has participated in a determination of probable cause or other equivalent preliminary determination or participated or made a decision which is on administrative appeal in a contested case may serve as a Committee member in the case where authorized by law and not subject to the disqualification or other cause provided in this chapter.

18. Ex parte Communications

- (a) Unless required for the disposition of ex parte matters specifically authorized by statute a hearing officer or institution Committee member serving in a case proceeding may not communicate, directly or indirectly, regarding any issue in the proceeding, while the proceeding is pending, with any person without notice and opportunity for all parties to participate in the communication.
- (b) Notwithstanding subsection (a) a hearing officer or institution representative may communicate with: other institution employees regarding a pending matter or may receive aid from staff assistants, members of the attorney general' s staff, or a licensed attorney, if such persons do not receive ex parte communications of a type that the hearing officer or institution representative would be prohibited from receiving; and do not furnish, augment, diminish or modify the evidence in the record.
- (c) Unless required for the disposition of ex parte matters specifically authorized by statute, no party to a contested case, and no other person may communicate, directly or indirectly, in connection with any issue in that proceeding, while the proceeding is pending, with any person serving as a hearing officer or Committee member without notice and opportunity for all parties to participate in the communication.
- (d) If, before serving as a hearing officer or Committee member in a case, a person receives an ex parte communication of a type that may not properly be received while serving, the person, promptly after starting to serve, shall disclose the communication in the manner prescribed in subsection (e) which follows.
- (e) A judge, hearing officer, or Committee member who receives an ex parte communication in violation of this section shall place on the record of the pending matter all written communications received, all written responses to the communications, and a memorandum stating the substance of all oral communications received, all responses made, and the identity of each person from whom the person received an ex parte communication, and advise all parties that these matters have been placed on the record. Any party desiring to rebut the ex parte communication shall be allowed to do so, upon requesting the opportunity for rebuttal within ten (10) days after notice of the communication.
- (f) A hearing officer or Committee member who receives an ex parte communication in violation of this section may be disqualified as previously outlined.
- (g) The institution shall, and any party may, report any willful violation of this section to appropriate authorities for any disciplinary proceedings provided by law.

19. Representation at the Hearing

- (a) Any party may participate in the hearing in person, or if the party is an organization by a duly authorized representative.

- (b) Whether or not participating in person, any party may be advised and represented at the party's own expense by counsel or, unless prohibited by any provision of law, other representative.

20. Conduct of the Hearing

- (a) In the hearing of any case the proceedings or any part thereof:
 - (1) Shall be conducted in the presence of the requisite number of members of the institution and in the presence of a hearing officer; or
 - (2) Shall be conducted by a hearing officer sitting alone.
- (b) It shall be the duty of the hearing officer to preside at the hearing, rule on questions of the admissibility of evidence, swear witnesses, advise the Committee members as to the law of the case, and insure that the proceedings are carried out in accordance with the applicable law and the rules of the State Board of Regents. A hearing officer shall, upon his own motion, or timely motion of a party, decide any procedural question of law.
- (c) The hearing officer shall regulate the course of the proceedings, in conformity with the pre-hearing order, if any.
- (d) Where more than one party is charged with offenses arising out of single occurrence or out of multiple connected occurrences, a consolidated hearing will be held for all parties charged; provided that upon timely motion and for good cause shown the officer may in his or her discretion grant a separate hearing for any party or parties.
- (e) A tape-recording but not a transcription will be made of the hearing. The party charged may request that the recording be transcribed at his or her own expense, or the recording may be transcribed by the institution or school, in which case any party shall be provided copies upon payment of a reasonable compensatory fee. No tape recording by the party charged or by other persons at the hearing will be permitted, but the party charged, at his or her own expense, may furnish a certified court reporter provided that a copy of the transcript is promptly furnished to the director at no cost.
- (f) The hearing shall be open to public observation pursuant to the provisions of the Tennessee Open Meetings Act, Chapter 44 of Title 8 unless otherwise provided by State or Federal law.

21. Order

- (a) The institution shall render an order in each case.
- (b) The order shall be rendered in writing within ninety (90) days after conclusion of the hearing or after submission to proposed findings unless such period is waived or extended with the written consent of all parties or for good cause shown.
- (c) If an order is adverse to the party charged it shall in addition to being in writing, include findings of fact, conclusions of law, and reasons for the ultimate decision. Findings of fact shall be based exclusively on the evidence and on matters officially noticed. Parties shall be notified in writing either personally or by mail of the decision and such notice shall include a statement

of the party' s right to judicial reviewA copy of the decision shall be delivered or mailed forthwith to each party or to his or her attorney of record.

- (d) The order made either by the hearing officer (or committee by majority vote) may be reviewed by the President, in the discretion of the President director. If the decision is reviewed by the President director based upon the findings of the hearing officer (or committee), a final decision will not be made until the President director has reviewed the entire record of the proceeding.

22. Review of Order

- (a) A petition for appeal from an initial order shall be filed with the institution or with any person designated for such purpose by rule of the institution, within ten (10) days after entry of the initial order. The ten-day period for a party to file a petition for appeal or for the President to give notice of its intention to review an initial order on his/her own motion shall be tolled by the submission of a timely petition for reconsideration of the initial order and a new ten-day period shall start to run upon disposition of the petition reconsideration. If an initial order is subject both to a timely petition for reconsideration and to a petition for appeal or to review by the institution on its own motion, the petition for reconsideration shall be disposed of first, unless the institution determines that action on the petition for reconsideration has been unreasonably delayed.
- (b) The petition for appeal shall state its basis. If the President on its own motion gives notice of its intent to review an initial order, the President shall identify the issues that it intends to review.
- (c) The person reviewing an initial order shall exercise all the decision-making power that the President would have had to render a final order had the President presided over the hearing, except to the extent that the issue subject to review are limited by rule or statute or by State Board of Regents policies upon notice to all parties.
- (d) The President shall afford each party an opportunity to present briefs and may afford each party an opportunity to present oral argument.
- (e) A final order or an order remanding the matter for further proceedings pursuant to this section, shall be rendered and entered in writing within sixty (60) days after receipt of any briefs and oral argument, unless the period is waived or extended with the written consent of all parties or for good cause shown.
- (f) The institution will deliver copies of the final order or order remanding the matter for further proceedings to each party and to the hearing officer who conducted the case.

23. Stay

A party may submit to the institution a petition for stay of effectiveness of an initial or final order within seven (7) days after its entry unless otherwise provided by statute or stated in the initial or final order. The President may take action on the petition for stay, either before or after the effective date of the initial or final order.

24. Effectiveness of New Order

- (a) Unless a later date is stated in an initial or final order, or a stay is granted, an initial or final order shall become effective upon entry of the initial or final order. All initial and final orders shall state when the order is entered and effective.
- (b) If the institution has utilized an administrative judge from the Administrative Procedures Division of the Office of the Secretary of State, the initial or final order shall not be deemed entered until the order has been filed with the Administrative Procedures Division.
- (c) The President shall designate which officials or employees may sign final orders.
- (d) A party may not be required to comply with a final order unless the final order has been mailed to the last known address of the party or unless the party has actual knowledge of the final order.
- (e) A nonparty may not be required to comply with a final order unless the institution has made the final order available for public inspection and copying or unless the nonparty has actual knowledge of the final order.
- (f) This section shall not preclude any President from taking immediate action to protect the public interest.

25. Record

- (a) The institution shall maintain an official record of each case under this policy. The record shall be maintained for a period of time not less than three (3) years.
- (b) This record shall consist of:
 - (1) Notice of all proceedings;
 - (2) Any pre-hearing order;
 - (3) Any motions, pleadings, briefs, petitions, requests, and intermediate rulings;
 - (4) Evidence received or considered;
 - (5) A statement of matters officially noticed;
 - (6) Offers of proof and objections and rulings thereon;
 - (7) Proposed findings, requested orders, and exceptions;
 - (8) The tape recording, stenographic notes or symbols, or transcript of the hearing;
 - (9) Any final order, initial order, or order on reconsideration;
 - (10) Staff memoranda or data submitted to the institution unless prepared and submitted by personal assistants;
 - (11) Matters placed on the record after an ex parte communication.
- (c) A record (which may consist of a tape or similar electronic recording) shall be made of all oral proceedings. Such record or any part thereof shall be transcribed on request of any party at his expense or may be transcribed by the institution at its expense. If the institution elects to

transcribe the proceedings, any party shall be provided copies of the transcript upon payment to the institution of a reasonable compensatory fee.

- (d) Except to the extent that this chapter or another statute provides otherwise, the institution ' s record shall constitute the exclusive basis for institution action in adjudicative proceedings under this policy, and for judicial review thereof.

26. Judicial Review

A person who is aggrieved by a final decision in a contested case is entitled to judicial review.

**WAIVER AND ELECTION
OF HEARING PROCEDURES**

I, _____, being an employee of
_____, and having been charged by said
institution with the following violations of policies:

do hereby knowingly and voluntarily waive my right to a hearing pursuant to the Tennessee
Administrative procedures Act, TCA 4-507 – 4-527, being fully aware of my right under said Act,
on the above charges. In addition, I hereby elect to have the above stated charges heard and
determined by the _____, subject to the procedures of the institution, and
subject to possible judicial review in accordance with TCA 4-523.

Date: _____

Signature

WAIVER OF HEARING

I, _____, being an employee of _____, and having been charged by said institution with the following violations of policies:

do hereby knowingly and voluntarily waive my right to a hearing pursuant to the Tennessee Administrative Procedures Act, TCA 4-507 – 4-527, and pursuant to any other law or constitutional provision, being fully aware of my right to a hearing under said Act and under law. In addition, I hereby accept the following personnel action as a result of my violations of the above policies:

My acceptance of the foregoing personnel action is based upon my acknowledgment of having committed the above stated violations.

Date: _____

Signature

MIDDLE TENNESSEE STATE UNIVERSITY
COMPLAINT
AND
NOTICE OF HEARING

IN THE MATTER OF PROPOSED PERSONNEL ACTION AGAINST

_____ FILE NO. _____
(Name of Employee)

TO THE ABOVE NAME EMPLOYEE:

You are hereby notified of your opportunity for a hearing on the charges hereinafter set forth, which hearing has been set for ____ o'clock ____ .M., on the ____ day of _____, 20____, to be held in

_____, _____
(Room and Building) (Name of Institution)

(Address)

The hearing will be held before _____,
(Name of Hearing Officer or Committee)

and the purpose of the hearing will be to determine whether you have violated policies of the Institution and, if a violation is found, to determine the appropriate personnel action to be taken against you. The hearing will be held pursuant to the procedures attached to this Notice, and you have the right to be represented by counsel at the hearing.

You have been charged with violation(s) of the following policy of the Institution:

The foregoing charge(s) is based upon the following alleged facts:

You are required to serve upon _____,
(Director)

_____, a written response to this complaint within five (5) days after service of this Complaint and Notice of Hearing upon you. If you fail to do so, judgment by default may be taken against you on the charges set forth herein, and the appropriate personnel action upon you.

Date: _____
(Director)

RETURN OF SERVICE

If service is made by return receipt mail, fill out the following:

I hereby certify that on the _____ day of _____, 20____, I mailed this Complaint and Notice of Hearing together with the attached procedures to _____,
(Name of Employee)

_____ via United States Mail, postage prepaid, certified
(Address)

(registered) mail No. _____.

(Attach a copy of the signed Receipt when returned.)

If service is made by personal service, fill out the following:

I hereby certify that on the _____ day of _____, 20_____, I personally served this Complaint and Notice of Hearing together with the attached procedures upon

(Name of Employee)

(Signature)

Subscribed and sworn to before me a notary public, this _____ day of _____, 20_____.

(Notary)

(I, _____, do hereby acknowledge Receipt of a copy of this Complaint and Notice of Hearing, together with the attached procedures, this _____ day of _____, 20_____.

_____)
(Employee Signature)

MIDDLE TENNESSEE STATE UNIVERSITY
SUBPOENA

IN THE MATTER OF PROPOSED PERSONNEL ACTION AGAINST

Name: _____ FILE NO. _____

TO _____

Your are hereby summoned to be present before _____
in _____,
(Room and Building) (Name of Institution)
_____, on the _____ day of _____,
20 _____, at _____ o'clock _____.M., to give testimony on behalf of _____
in the above styled cause.

You are further commanded to bring with you the following:

Date: _____

(Hearing Officer)

This subpoena is issued pursuant to the request of _____.

Note: If subpoena is issued pursuant to request of party other than the Institution, the party must tender to the witness (or other person who is to serve the subpoena) an amount sufficient to pay the fees of the witness, including the fee for one day's attendance and the mileage allowed by law.

RETURN OF SERVICE

I hereby certify that I served this subpoena on _____ by
personally delivering a copy to him/her and by tendering to him/her the fee for one day's
attendance and the mileage allowed by law, this _____ day of _____, 20_____.

(Signature)

Witness Fees

Travel _____ miles \$ _____
Services _____ days \$ _____
Total \$ _____

Subscribed and sworn to before me, a notary public, this _____ day of _____, 20_____.

(Notary)

MIDDLE TENNESSEE STATE UNIVERSITY

IN THE MATTER OF PROPOSED PERSONNEL ACTION AGAINST

Name: _____ File No. _____

FINAL DECISION

This cause came on to be heard before the _____ (the below signed hearing officer) of _____ at _____ o'clock _____.M. on the _____ day of _____, 20_____, upon the Complaint and subsequent pleadings of the parties, the testimony of witnesses, the arguments of the parties or their counsel, and all other evidence in this proceeding, upon consideration of which this (Committee) (Officer) makes the following findings of fact:

On the basis of the foregoing findings of fact, this (Committee) (Officer) makes the following conclusions as to the effects of the findings of fact upon the charge(s) against the Employee: _____

It is, therefore, the decision of this (Committee) (Officer) that the Employee, _____, did (not) violate policies of the Institution as charged in the Complaint and Notice of Hearing, in that the Employee _____

Furthermore, it is the decision of this (Committee) (Officer) that the Employee be, and _____ hereby is, subjected to the following personnel action:

This decision entered this _____ day of _____, 20 _____.

(Name)
(Chairperson of Committee or Hearing Officer)

The Employee is hereby notified that, if the above decision is adverse to _____, _____ may file a petition for review in the Chancery Court of _____ County, Tennessee, within sixty (60) days of the date of this decision, pursuant to TCA 4-523. In addition, the Employee may, in _____ discretion, appeal an adverse decision to the President of the Institution within fifteen (15) days of the date of this decision. If the decision is appealed to the President, the President may, upon application by Employee, in his discretion, suspend this decision pending his review and decision. Such a suspension will extend the period of time for judicial review by the period of the suspension.