

## Chapter TCS 4

### ADMINISTRATIVE HEARING PROCEDURES

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**Note:** Chapter A-V 4 was renumbered chapter TCS 4, Register, September, 1985, No. 357, eff. 10-1-85.

**TCS 4.01 Definitions.** (1) "Board" means the technical college system board.

(2) "Certificate" means approval status, emergency approval status, provisional certificates and 5 year certificates as used in ch. TCS 3.

(3) "Code" means the Wisconsin Administrative Code.

(4) "District" means a technical college district.

(5) "Hearings" means both hearings and rehearings and this chapter shall cover both so far as applicable, except where otherwise specifically provided for by statute or this chapter.

(6) "State director" includes the designee of the state director whenever detailed by the state director or discharging the duties and exercising the powers of the state director on appeals and hearings during his or her absence.

(7) "Statutes" means the Wisconsin Statutes.

**History:** Cr. Register, February, 1981, No. 302, eff. 3-1-81; am. (2), Register, September, 1985, No. 357, eff. 10-1-85; correction in (1), (2) and (4) made under s. 13.93 (2m) (b) 6 and 7, Stats., Register, June, 1994, No. 462.

**TCS 4.02 Communications and documents addressed to the board.** (1) All written communications and documents, submitted pursuant to this chapter, should be addressed to the State Director, Wisconsin Technical College System Board, 310 Price Place, Madison, Wisconsin 53705, and not to individual members of the staff. All documents and communications delivered at the office of the state director are officially received.

(2) The state director may designate agents to receive written communications and documents. Hearing examiners will receive communications and documents at hearings.

(3) Office hours are those listed in s. 230.35 (4) (f), Stats. Offices are closed on Saturdays and Sundays and on holidays listed in s. 230.35 (4) (a), Stats.

**History:** Cr. Register, February, 1981, No. 302, eff. 3-1-81; correction in (1) made under s. 13.93 (2m) (b) 6, Stats., Register, September, 1985, No. 357; correction in (1) made under s. 13.93 (2m) (b) 6, Stats., Register, June, 1994, No. 462.

**TCS 4.03 Location of hearing.** Unless otherwise ordered in the notice of hearing or specifically provided by law, all hearings shall be held at the office of the board, 310 Price Place, P.O. Box 7874, Madison, Wisconsin 53707-7874.

**History:** Cr. Register, February, 1981, No. 302, eff. 3-1-81; correction made under s. 13.93 (2m) (b) 6, Stats., Register, June, 1994, No. 462.

**TCS 4.04 Parties.** Parties to proceedings are known as petitioners, respondents, intervenors, applicants, and objectors, according to the nature of the proceeding and relationship of the parties to the proceedings.

(1) Parties seeking relief from district budget limitations are applicants, those opposing such applicants are objectors and those other than applicants or objectors are intervenors.

(2) Parties filing petitions for review are petitioners, those opposing such petitioners are respondents.

**History:** Cr. Register, February, 1981, No. 302, eff. 3-1-81.

**TCS 4.05 Service of papers and documents.** (1) **MANNER OF SERVICE.** Except as otherwise specifically required, service of documents required to be served may be made by personal delivery or by mailing a copy to the last known post office address of the person to be served, in a sealed envelope with first class postage affixed, and shall be deemed to have been served upon deposit in the U.S. mails.

(2) **DATE OF SERVICE.** The date of service shall be either the day when the document served is deposited in the mail or is delivered in person.

**History:** Cr. Register, February, 1981, No. 302, eff. 3-1-81.

**TCS 4.06 Form and style of pleadings.** All pleadings, notices, orders and other papers filed in connection with any matter or proceeding before the board shall be captioned "STATE OF WISCONSIN, TECHNICAL COLLEGE SYS-

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**TEM BOARD** and entitled "In the Matter of \_\_\_\_\_ (here state the nature of the proceeding) of \_\_\_\_\_ (here state the name of the aggrieved party)." All papers filed at or in reference to any hearing shall be either printed or typewritten and, except such parts as may be on official forms or other forms or documents in regular use in matters pertaining to vocational education, all pleadings, notices, exhibits, papers and documents filed or presented at any hearings shall be on paper not more than 8 ½ inches wide and 11 inches long. The original shall be filed with the board or the hearing examiner conducting the hearing, and a copy thereof shall be furnished to each party or person interested who enters an appearance in the proceedings. The original of such paper (except exhibits offered as evidence) shall be dated and signed with the handwritten signature of the party, or of an officer, agent, employe, or attorney appearing for or with the party in the proceeding, and the name and mailing address of the party or of the representative appearing and signing the same shall be printed or typed immediately following the written signature.

**History:** Cr. Register, February, 1981, No. 302, eff. 3-1-81; correction made under s. 13.93 (2m) (b) 6, Stats., Register, June, 1994, No. 462.

**TCS 4.07 How proceedings instituted.** Proceedings for a hearing upon a matter shall be initiated as follows:

(1) On a petition for review by an aggrieved individual or technical college district.

(2) On an application by any technical college district for relief from district budget limitations.

**History:** Cr. Register, February, 1981, No. 302, eff. 3-1-81; corrections made under 13.93 (2m) (b) 6, Stats., Register, June, 1994, No. 462.

**TCS 4.08 Contents of petition for review.** A petition for review shall be in writing and shall contain:

(1) The name, place of residence and post office address of the petitioner.

(2) A concise statement of the grounds for the petition.

(3) A concise statement of the relief requested.

(4) A signature of the petitioner or duly authorized agent.

**History:** Cr. Register, February, 1981, No. 302, eff. 3-1-81.

**TCS 4.09 Contents of application.** An application for relief from budget limitations shall contain:

(1) The name, and post office address of the applicant.

(2) The information required under s. TCS 6.03 (3).

(3) A signature of the district director or duly authorized agent.

**History:** Cr. Register, February, 1981, No. 302, eff. 3-1-81; am. (2), Register, September, 1985, No. 357, eff. 10-1-85; correction in (2) made under s. 13.93 (2m) (b) 7, Stats., Register, June, 1994, No. 462.

**TCS 4.10 Notice of hearing.** (1) **FORM.** Notice of hearing shall be in writing, with a title identifying the matter to be set for hearing.

(2) **CONTENT.** The notice of hearing shall contain the following information:

(a) Date, time and location of hearing;

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(b) The reason for the hearing;

(c) A short summary of the matter to be considered;

(d) Any other information as the board may deem appropriate.

**History:** Cr. Register, February, 1981, No. 302, eff. 3-1-81.

**TCS 4.11 Prehearing conferences.** Prehearing conferences may be held at the convenience of the parties and shall be conducted by the hearing examiner designated pursuant to s. TCS 4.12, who shall keep a record of any agreement as to the issues, or stipulation or admission of fact which may be made at such conference or conferences. Such record shall be attached to the file in memorandum form and constitute a part of the official record of the proceeding.

**History:** Cr. Register, February, 1981, No. 302, eff. 3-1-81; am. Register, September, 1985, No. 357, eff. 10-1-85; correction made under s. 13.93 (2m) (b) 7, Stats., Register, June, 1994, No. 462.

**TCS 4.12 Conduct of hearings.** (1) **HEARING EXAMINER.** Unless otherwise ordered by the board, all hearings shall be conducted on behalf of the board by a hearing examiner designated by the state director, who shall, in addition to any powers contained in this chapter, have all powers of a hearing examiner permitted by ch. 227, Stats.

(2) **PROCEDURE.** The hearing examiner will open the hearing and make a concise statement of its scope and purposes. If the matter is contested, the hearing examiner will state the issues in the proceedings. Thereafter, parties may make motions or opening statements.

(3) **OPENING STATEMENTS.** When opening statements are made they shall be confined to:

(a) A brief summary or outline in clear and concise form of the evidence to be offered; and

(b) A statement of ultimate legal points relied upon.

(4) **OFF RECORD.** Parties may be off the record only when the hearing examiner permits. If a discussion off the record is deemed pertinent by the hearing examiner, the hearing examiner may summarize it on the record.

**History:** Cr. Register, February, 1981, No. 302, eff. 3-1-81.

**TCS 4.13 Appearances.** (1) Parties may appear in person or by a regularly employed employe or agent, or by a duly authorized attorney at law, and if a corporation by any of its active officers. Upon an appearance at a hearing the name and mail address of the party appearing and the name and mail address of any agent, employe, officer or attorney appearing with or for the party shall be furnished and entered in the record of the proceedings, and the appearances so made and the mail addresses so given shall be binding on the party unless and except as modified by written notice to the state director or the hearing examiner conducting the hearing and to all other parties appearing in the proceeding and served as provided by s. TCS 4.05 which when so modified shall in turn have the same force and effect as in the first instance.

(2) Members of the state board's staff appearing in budget limitations hearings are neither in support of nor

in opposition to the cause, but solely to discover and present, if necessary, facts pertinent to the issues.

**History:** Cr. Register, February, 1981, No. 302, eff. 3-1-81; am. (1), Register, September, 1985, No. 357, eff. 10-1-85; correction in (1) made under s. 13.93 (2m) (b) 7, Stats., Register, June, 1994, No. 462.

**TCS 4.14 Order of presenting evidence.** Evidence ordinarily will be presented in the following order:

(1) Upon applications for relief from district budget limitations: a) the applicant, b) intervenors in support of the applicant, c) objector, d) intervenors in support of the objector, and e) state board staff.

(2) Upon petitions: a) petitioner and supporting witnesses and b) respondent and supporting witnesses.

**History:** Cr. Register, February, 1981, No. 302, eff. 3-1-81.

**TCS 4.15 Evidence and official notice.** Rules of evidence are governed by s. 227.08, Stats.

**History:** Cr. Register, February, 1981, No. 302, eff. 3-1-81.

**TCS 4.16 Defaults.** If a party who has received notice of a hearing fails to appear at the hearing, the hearing examiner may proceed with the hearing and, on the evidence presented, may make a decision and issue an order.

**History:** Cr. Register, February, 1981, No. 302, eff. 3-1-81.

**TCS 4.17 Subpoenas and witnesses.** The hearing examiner designated to conduct the hearing may sign and issue subpoenas for the attendance of witnesses or parties at hearings.

**History:** Cr. Register, February, 1981, No. 302, eff. 3-1-81.

**TCS 4.18 Record of hearings. (1) METHOD.** Hearings will be recorded either stenographically or mechanically, and the transcript together with all exhibits, shall be a part of the official record of such proceeding. A typed transcript will be made when deemed necessary by the board. If a transcript is made by the board, copies will be furnished to all persons upon request at a reasonable cost. If no transcript is deemed necessary by the board and a party requests that one be prepared, that party shall be responsible for all costs of transcript preparation. In lieu of a transcript the board will provide any person a copy of the tape recording of the hearing if mechanically recorded upon request and at a reasonable cost. All requests pursuant to the foregoing shall be made in writing and presented to the hearing examiner at the hearing.

(2) **FINANCIAL NEED.** Any party who by affidavit or other appropriate means can establish to the board's satisfaction that the party is impecunious may be provided a copy of the transcript or a copy of the tape recording without charge.

(3) **ERRORS IN RECORD.** Any party, within 7 days of the date of mailing of the transcript, may file with the board a notice in writing of any claimed error in the record and shall mail a copy of the notice to each party of record. All parties will be advised by the board of any authorized corrections to the record.

**History:** Cr. Register, February, 1981, No. 302, eff. 3-1-81.

**TCS 4.19 Stipulations.** All stipulations or agreements in reference to a matter that is the subject of a hearing shall be either dictated at length into the record, or reduced to writing, shall be signed by the persons or parties stipulat-

ing, and filed as a part of the record of the proceedings. Controversies, or matters which may be the subject of a hearing, may be disposed of by stipulation, agreed settlement, or consent orders.

**History:** Cr. Register, February, 1981, No. 302, eff. 3-1-81.

**TCS 4.20 Motions. (1) PROCEDURE.** Unless made during a hearing or prehearing conference, all motions shall be made in writing, shall state with particularity the grounds for the motion and the relief or order sought. A notice of motion is not required, notice being satisfied by service of the copy of the motion.

(2) **SUPPORTING PAPERS.** A brief or other papers in support of a motion including affidavits and documentary evidence, shall be served and filed with the motion.

**History:** Cr. Register, February, 1981, No. 302, eff. 3-1-81.

**TCS 4.21 Oral statements and arguments.** Parties may make opening statements after appearances have been entered, and any party to the proceeding may make closing argument at the close of the hearing, which shall not be included in the stenographic or mechanical report of the hearing, unless the presiding officer so directs. The hearing examiner may in his or her discretion, limit the amount of time for opening statement or closing arguments.

**History:** Cr. Register, February, 1981, No. 302, eff. 3-1-81.

**TCS 4.22 Briefs.** The hearing examiner at the hearing shall indicate whether or not briefs are desired and may impose a briefing schedule. If the time for filing briefs has expired and the brief of one or more of the parties has not been filed within the prescribed time, the board may proceed to its determination of the matter. Extension of time to file briefs may be granted by the hearing examiner upon good cause shown.

**History:** Cr. Register, February, 1981, No. 302, eff. 3-1-81.

**TCS 4.23 Decisions.** Where a proposed decision is prepared and circulated pursuant to s. 227.09 (2) or (4), Stats., objections thereto shall be filed within 15 days of service unless a different period is specified by the hearing examiner or board. Objections and briefs shall be filed together and served on all parties.

**History:** Cr. Register, February, 1981, No. 302, eff. 3-1-81.

**TCS 4.24 Petition for rehearing.** The board shall not grant a rehearing except upon formal petition being filed with the board within 20 days after service of the final order and decision. Rehearing will be granted only on the basis of some material error of law or fact, or new evidence sufficiently strong to reverse or modify the order, and which could not have been previously discovered by due diligence. The board may order a rehearing or enter an order with reference to the petition without a hearing, and shall dispose of the petition within 20 days after it is filed. If the board does not enter an order disposing of the petition within the 20 day period, the petition shall be deemed to have been denied as of the expiration of the 20 day period.

**History:** Cr. Register, February, 1981, No. 302, eff. 3-1-81.

**TCS 4.25 Notice and explanation upon denial of certification to educational personnel.** Upon denial of an application for certification pursuant to ch. TCS 3, the board

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shall notify the applicant and candidate in writing. Both the applicant and candidate shall have a right to a hearing upon denial if a written petition for review is filed with the board within 30 days of the decision. The board shall make available to the applicant or candidate all materials in its possession which were used in reaching the decision

to deny a certificate. The burden of proving certifiability pursuant to ch. TCS 3 will remain on the applicant.

**History:** Cr. Register, February, 1981, No. 302, eff. 3-1-81; am. Register, September, 1985, No. 357, eff. 10-1-85; correction made under s. 13.93 (2m) (b) 7, Stats., Register, June, 1994, No. 462.