

**RULES
OF
TENNESSEE HIGHER EDUCATION COMMISSION**

**CHAPTER 1540-01-10
AUTHORIZATION AND REGULATION OF
REGULATION OF POSTSECONDARY EDUCATIONAL INSTITUTIONS WITH OPTIONAL EXPEDITED
AUTHORIZATION (OEA)**

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1540-01-10-.01 INCORPORATION OF RULES.

- (1) Rules 1540-01-02-.01, .02, .04, .18 and .26 shall be incorporated into this Rule Chapter as if fully written herein.

Authority: Acts 2016, ch. 868. **Administrative History:** Emergency rules filed August 15, 2016; effective October 3, 2016 through April 1, 2017.

1540-01-10-.02 DEFINITIONS.

- (1) "Accreditation" is a non-governmental, peer evaluation of educational institutions and programs. Private educational associations of regional and national scope that have adopted criteria for educational programs and have developed procedures for evaluating institutions or programs. These criteria determine whether or not institutions or programs are operating at basic levels of quality. The Commission only recognizes accrediting agencies that are recognized by the U.S. Department of Education.
- (2) "Act" means the Tennessee Higher Education Authorization Act of 2016, T.C.A. §§ 49-7-2001, et seq., as amended.
- (3) "Articulation and transfer of credit agreement" means an arrangement between two (2) higher education institutions that is approved and signed by authorized institutional representatives and constructed by faculty in the discipline that (1) equates for transfer of a defined set or block of academic credits that will meet requirements of a specified program at a degree-awarding institution or (2) provides that a specific credential from one institution will meet the admission education requirement for a program leading to a higher credential at a second institution.
- (4) "Authorization to operate" means approval of the Commission to operate or to contract to operate a postsecondary educational institution in this state as described in T.C.A. § 49-7-2007(1) – (3) or (5). Authorization to operate is for a specified time at a specified location. Institutions shall not use an authorization to operate to connote greater approval than simple permission to operate. Terms which may not be used include, but are not limited to, "accredited," "supervised," "endorsed," and "recommended by the Commission."
- (5) "Commission" means the Tennessee Higher Education Commission.
- (6) "Committee" means the Committee on Postsecondary Educational Institutions.

(Rule 1540-01-10-.02, continued)

- (7) "Degree-granting postsecondary educational institution" includes institutions offering education or training above the high school level and where the institution awards degrees, such as associate, bachelors, masters, specialist, or doctoral degrees.
- (8) "Division of Postsecondary State Authorization" or "DPSA" means the division within the Tennessee Higher Education Commission tasked with overseeing the implementation and enforcement of the Act and these rules.
- (9) "Federal student financial aid programs" means any of the various loans or grants offered to students, parents, or institutions through Title IV of the Higher Education Opportunity Act, as amended.
- (10) "License" or "Licensure" includes similar terms, such as registration and certification, and means a designation from a subject matter expert state agency, board, or commission indicating that the recipient has met certain requirements for obtaining the designation, for example, a licensed massage therapist or educator.
- (11) "Location" means an address that is zoned for commercial purposes for use as a postsecondary educational institution.
- (12) "Optional expedited authorization" or "OEA" means the optional expedited authorization available pursuant to 2016 Public Chapter 868 and these rules to certain accredited degree-granting institutions.
- (13) "Other fees" means fees, other than tuition, paid to the institution or third parties for products or services, including, but not limited to, fees paid for tangible goods, laboratory fees, technology fees, student activity fees, graduation fees, or fees paid for housing, meals, or transportation.
- (14) "Postsecondary educational institution" includes, but is not limited to, an academic, vocational, technical, online/distance learning, business, professional, or other school, college, or university, or other organization or person, offering educational credentials, or offering instruction or educational services primarily to persons who have completed or terminated their secondary education or who are beyond the age of compulsory high school attendance, for attainment of educational, professional, or vocational objectives.
- (15) "These rules" means all rules contained in Rule Chapter 1540-01-10.
- (16) "Tuition" means any fee involving the student, actually charged or tracked as a bookkeeping item for instruction provided.

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1540-01-10-.03 ELIGIBILITY AND APPLICATION REQUIREMENTS.

- (1) In order to receive OEA, a postsecondary educational institution must meet the following eligibility requirements:
 - (a) Meet the definition of degree-granting postsecondary educational institution;
 - (b) Be accredited by a regional or national institutional accrediting agency recognized by the U.S. Department of Education; and

(Rule 1540-01-10-.03, continued)

(c) Provide the following information and documentation as part of a signed and notarized OEA Application created by Commission Staff:

1. Evidence of good-standing and valid institutional accreditation from a regional or national institutional accrediting agency recognized by the U.S. Department of Education;
2. Documentation evidencing an established, clearly articulated, and comprehensive process for the resolution of student complaints. In order to be a comprehensive process, the process must contain:
 - (i) A detailed explanation as to how a student escalates a grievance to the highest level at the authorized institution location;
 - (ii) An opportunity for all persons involved in the complaint to be heard at any final step at the institutional location level, including, but not limited to, an appeal;
 - (iii) An explanation as to how the institution will notify students that complaints not resolved at the institutional location level may be filed with the Commission; and
 - (iv) An explanation as to how students will be notified of the institution's comprehensive process;
3. Documentation demonstrating the institution is operating lawfully in the state. Institutions registered by the Tennessee Secretary of State shall submit a Certificate of Existence issued no more than two (2) months prior to the date of the application. Institutions that are not registered with the Secretary of State shall submit a local business license;
4. Documentation demonstrating that the institution is currently maintaining financial standards and institutional stability deemed acceptable for eligibility in Title IV federal student financial aid programs. Documentation shall include at a minimum:
 - (i) The most recent independent audit completed, in part, for purposes of calculating the institution's federal financial composite score as described in 34 C.F.R. § 668.172; and
 - (ii) Any correspondence issued in the past twenty-four (24) months from the Federal Student Aid Office of the U.S. Department of Education concerning eligibility for financial aid, including, but not limited to, financial ratios, a letter of credit alternative, or a provisional certification alternative as well as any related correspondence from the institution;
5. A comprehensive list or verification of all programs offered at the institution along with, when applicable, documentation evidencing receipt of all requisite program approvals from subject matter expert state licensing agencies, boards, or commissions. Evidence shall be provided for any program designed to train a student for employment in a field where a license is required in order to be employed in that field. The evidence shall clearly demonstrate that the state agency, board, or commission has determined that the program meets the educational requirements necessary to receive a license or sit for a required

(Rule 1540-01-10-.03, continued)

exam. The comprehensive list or verification shall include, at a minimum, the following information:

- (i) Program name;
 - (ii) DPSA assigned program code;
 - (iii) Credential awarded;
 - (iv) Credit hours or contact hours to be awarded;
 - (v) Length of time expected to complete the program;
 - (vi) Cost of program tuition;
 - (vii) Cost of other fees;
 - (viii) Program status;
 - (ix) A Classification of Instructional Programs (CIP) code;
 - (x) Whether programmatic accreditation is required for the program and the name of the accreditor that has reviewed and accredited the program; and
 - (xi) The website address to the gainful employment data for the program. The address should provide a reasonable person easy access to this information;
6. A report of any illegal or unethical conduct by employees, agents, contractors, or third-party service providers related to the delivery of educational programs and services to students with any corrective action and remedies taken by the institution;
 7. A description of the ownership of the institution and when applicable, a corporate flowchart showing the institution's position in relationship to all affiliated corporate entities;
 8. Copies of all executed articulation and transfer of credit agreements with other institutions operating in Tennessee;
 9. The most recently calculated three-year (3) official cohort default rate from the Office of Federal Student Aid of the U.S. Department of Education. Institutions with official cohort default rates for the three most recent years equal to or greater than thirty percent (30%) or a current official cohort default rate greater than forty percent (40%) are not eligible for OEA; and
 10. Statistical data as described in Rule 1540-01-02-.18.
- (2) After receipt of an institution's application, Commission Staff shall conduct a detailed review and verification of the application. OEA applications will be processed as follows:
 - (a) Upon satisfactory examination of all submitted documentation, Commission Staff will recommend the application for recommendation of approval by the Committee to the Commission. Thereafter, the Committee's recommendation will be submitted to the

(Rule 1540-01-10-.03, continued)

Commission and upon approval by the Commission, Commission Staff shall issue notification of the OEA status noting that it is valid for one (1) year.

- (b) If the Commission upon review and consideration of the application determines the applicant is not eligible and fails to meet the OEA criteria established in this section, the Commission shall notify the applicant of its decision to deny the application and set forth the reasons for the denial in writing. Such denial can be reviewed as further described in Rule .05 of these rules.
- (c) In order to continue OEA for an additional year, an institution must complete an application as described in Rule .03(1)(c) of these rules and file it with Commission Staff by the due date immediately preceding the expiration date of the institution's current OEA. In the event that an application is timely filed but is not considered by the Commission prior to the current OEA expiration date, Commission Staff may continue an institution's OEA for not more than six (6) months.

Authority: Acts 2016, ch. 868. **Administrative History:** Emergency rules filed August 15, 2016; effective October 3, 2016 through April 1, 2017.

1540-01-10-.04 REQUIRED NOTIFICATIONS TO COMMISSION STAFF.

- (1) OEA institutions shall notify Commission Staff, within five (5) business days, of the following:
 - (a) Action by an accrediting agency in regard to the institution's accreditation status, such as revocation, suspension, probation, warning, or similar action;
 - (b) Notice of legal action involving the institution, or its parent entity if applicable, and Tennessee students, related to the delivery of educational programming or student consumer practices, including, but not limited to, class action lawsuits;
 - (c) Utilization by the institution of a letter of credit or a cash management agreement with the U.S. Department of Education; or
 - (d) Public announcement of investigation by any governmental agency. The institution shall notify Commission Staff whether the investigation is related to the institution's academic quality, financial stability, or student or consumer practices.
- (2) Institutions shall submit a New Program Notification Form on the Committee meeting due dates for any programs implemented since the last due date. Once processed, Commission Staff will issue the institution a program code for use when submitting statistical data.
- (3) At the request of Commission Staff, the Executive Director, the Committee, or the Commission, OEA institutions shall provide any information deemed necessary to monitor the institution's eligibility for OEA.

Authority: Acts 2016, ch. 868. **Administrative History:** Emergency rules filed August 15, 2016; effective October 3, 2016 through April 1, 2017.

1540-01-10-.05 DENIAL OF OEA STATUS.

- (1) A decision of the Commission to deny OEA status shall be provided to the institution in writing through the Executive Director, provide the basis for denial, and be effective as of the date of the decision.

(Rule 1540-01-10-.05, continued)

- (2) Any person aggrieved by a decision of the Commission respecting denial of OEA status shall have the right to a hearing and review of the decision by the Commission as provided in 2016 Public Chapter 868 and these rules. An aggrieved party for purposes of this rule is any postsecondary educational institution denied OEA status.
- (3) If an aggrieved party desires a hearing and review, the party shall file a written notice within ten (10) business days after the date of the Commission's written notice of denial. If written notice is not provided by an aggrieved party, then the action shall be deemed final.
- (4) Upon receiving notice from an aggrieved party, the Commission shall fix the time and place for a hearing and shall notify the aggrieved party of the time and place of the hearing. The Commission may vote to have an administrative law judge from the Administrative Procedures Division of the Tennessee Secretary of State's Office conduct a contested case proceeding and issue an initial order pursuant to the Uniform Administrative Procedures Act.
- (5) At the hearing, the aggrieved party may employ counsel, shall have the right to hear the evidence upon which the action is based, and present evidence in opposition or in extenuation. If an administrative judge is not appointed, then any member of the Commission may preside except when a clear conflict of interest may be demonstrated.
- (6) Any decision by the Commission or an initial order by an administrative law judge shall include a statement of findings and conclusions upon all material issues of fact, law or discretion presented at the hearing and the appropriate rule, order, sanction, relief, or denial thereof.
- (7) Any final decision of the Commission shall be subject to the right of judicial review provided in T.C.A. § 49-7-2012.

Authority: Acts 2016, ch. 868. **Administrative History:** Emergency rules filed August 15, 2016; effective October 3, 2016 through April 1, 2017.

1540-01-10-.06 REVOCATION OF OEA STATUS.

- (1) OEA may be revoked for just cause. Revocation can occur as a result of:
 - (a) A vote of the Commission on its own motion or at the recommendation of the Committee or Commission Staff; or
 - (b) A determination of the Executive Director pursuant to Rule 1540-01-02-.02(e).
- (2) Just cause includes activities where the institution acted contrary to the public interest, exhibits questionable financial strength, or is not operating educational programs with acceptable outcomes and includes, but is not limited to:
 - (a) Loss or failure to meet any of the listed criteria for eligibility in Rule .03(1) of these rules;
 - (b) Failure to fulfill the requirements in Rule .03 of these rules;
 - (c) A finding resulting from a signed student complaint that:
 1. The institution did not follow its policies as presented to the student; or

(Rule 1540-01-10-.06, continued)

2. The institution hid a fact or made a verbal or written inaccurate representation to the student that affected the student's ability to make an appropriate decision concerning the student's investment of time and money.
 - (d) Having an institution-level or program-level withdrawal, completion, placement, or in-field placement rate that is less than the state average rate for other OEA institutions or a program type for more than two (2) consecutive years;
 - (e) Providing false or misleading statistical data;
 - (f) Failure to comply with the requirements of the tuition guaranty fund under § 49-7-2018 and the related rules;
 - (g) A three-year federal financial aid cohort default rate as calculated by the U.S. Department of Education of thirty percent (30%) or higher for three (3) consecutive years or over forty percent (40%) for any single year; or
 - (h) Allowing OEA to expire without timely filing an OEA Application or Initial Authorization Application.
- (3) Upon revocation of any institution's OEA, the following shall occur:
 - (a) The institution shall immediately be subject to all provisions of the Act and Rule Chapter 1540-01-02.
 - (b) The institution shall apply for Commission authorization under T.C.A. § 49-7-2008 and Rule Chapter 1540-01-02 by the next due date which is more than ten (10) business days from the date of revocation.
 - (c) The Executive Director may grant the institution conditional authorization to continue its operation as a non-OEA institution. Such conditional authorization shall not be for more than six (6) months. Failure to fulfill all conditions of authorization within six (6) months can lead to revocation of authorization.
 - (d) Any institution whose OEA is revoked by the Commission shall be ineligible to reapply for OEA for no less than twenty-four (24) months from the date of revocation.

Authority: Acts 2016, ch. 868. **Administrative History:** Emergency rules filed August 15, 2016; effective October 3, 2016 through April 1, 2017.

1540-01-10-.07 COMPLAINTS.

- (1) Commission Staff shall investigate any signed student complaint involving an OEA institution after verifying that the student has escalated the complaint to the institutional director and the institutional director has had an opportunity to investigate and resolve the complaint yet the complainant contends it remains unresolved.
- (2) Commission Staff's investigation shall determine:
 - (a) Whether the institution followed its policies as represented to the student; and
 - (b) Whether the institution failed to disclose a fact or made a verbal or written inaccurate representation to the student that affected the student's ability to make an appropriate decision concerning the student's investment of time and money.

(Rule 1540-01-10-.07, continued)

- (3) When determining whether a finding is appropriate, Commission Staff shall take into consideration any reasonable offers the institution made to resolve the student's complaint at the institutional level.
- (4) The investigation will proceed as follows:
 - (a) Complaints shall be signed and submitted through hand delivery, mail, or electronic mail as provided for in Rule .08 of these rules.
 - (b) Any named institution will receive a copy of the complaint and be provided an opportunity to respond to all allegations contained in the complaint.
 - (c) Any named institution shall provide all information requested by Commission Staff as part of the investigation.
 - (d) As part of the investigation process, Commission Staff may work with the complainant and the named institution to effectuate a settlement.
 - (e) If there are no findings, the complaint will be closed and the written determination shall include a date by which an aggrieved party may submit a request for further review by the Executive Director as provided for in Rule 1540-01-02-.02(2)(b). Such date shall not be earlier than ten (10) business days after the date of the written determinations. If no request for review is received, the complaint will be closed.
 - (f) If there are findings and proposed recommendations, the following process will be used:
 1. Commission Staff shall provide in the written determinations and proposed recommendations a date by which either party may respond to the findings or recommendations. Such date shall not be earlier than ten (10) business days after the date of the written determinations.
 2. Following review of the responses, if any, Commission Staff may:
 - (i) Determine that the complaint is closed by providing written notice to the parties. The written notice shall include a date by which an aggrieved party may submit a request for further review by the Executive Director as provided for in Rule 1540-01-02-.02(2)(b). Such date shall not be earlier than ten (10) business days after the date of the written determinations; or
 - (ii) Recommend that the Executive Director take some action that is within the scope of the proposed recommendations. Any decision of the Executive Director to take action will be provided to the parties by letter and shall include a date by which an aggrieved party may submit a request for further review by the Executive Director as provided for in Rule 1540-01-02-.02(2)(b). Such date shall not be earlier than ten (10) business days after the date of the written determinations.
 - (g) Any request for review shall be in writing, signed, list each instance where Commission Staff erred, and provide a detailed explanation of each alleged error with references to specific statutes or rules. Requests for review shall be received through hand delivery, mail, electronic mail or facsimile. A request may be denied if it is not received in a timely manner as set forth in subparagraph (f).

(Rule 1540-01-10-.07, continued)

Authority: Acts 2016, ch. 868. **Administrative History:** Emergency rules filed August 15, 2016; effective October 3, 2016 through April 1, 2017.

1540-01-10-.08 FILING METHODS AND REQUIREMENTS.

- (1) Application due dates and deferrals:
 - (a) For each quarterly meeting of the Committee, Commission Staff shall establish a due date that is no more than ninety (90) days before the date of the meeting. Unless stated by Commission Staff, the established due date shall apply to Optional Expedited Authorization Applications. Applications shall be received at DPSA on or before the due date. Applications received after that date will be deemed late and may be deferred to the next due date.
 - (b) An application submitted without the appropriate fee will be considered incomplete and will not be reviewed until all applicable fees are received. In any event, Commission Staff may defer the application to the next due date.
 - (c) Further, an incomplete application is an application that is missing any information or contains noncompliant information. Commission Staff may defer consideration of the application to the next due date.
 - (d) If an application is deferred, the institution shall have until the next established due date to complete the application.
 - (e) An application can be deferred either by the institution or Commission Staff a total of two (2) times. After the second deferral, the application will be deemed withdrawn if the institution does not submit a completed application by the next due date.
- (2) Unless otherwise provided, all filings must be received via hand delivery, mail, electronic mail, or facsimile. Current addresses and fax numbers will be posted on the THEC webpage.
- (3) Filings shall be received on the due date. Items postmarked on the due date but not received at DPSA will be deemed late.

Authority: Acts 2016, ch. 868. **Administrative History:** Emergency rules filed August 15, 2016; effective October 3, 2016 through April 1, 2017.

1540-01-10-.09 FEES.

- (1) An institution shall pay a fee of nine thousand dollars (\$9,000) to the Commission with the Optional Expedited Authorization Application.

Authority: Acts 2016, ch. 868. **Administrative History:** Emergency rules filed August 15, 2016; effective October 3, 2016 through April 1, 2017.