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# Notice of Rulemaking Hearing

Hearings will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, T.C.A. § 4-5-204. For questions and copies of the notice, contact the person listed below.

<b>Agency/Board/Commission:</b>	Tennessee Higher Education Commission
<b>Division:</b>	Division of Postsecondary State Authorization
<b>Contact Person:</b>	Julie M. Woodruff
<b>Address:</b>	404 James Robertson Parkway, Suite 1900, Nashville, TN 37243
<b>Phone:</b>	615-741-5293
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Any Individuals with disabilities who wish to participate in these proceedings (to review these filings) and may require aid to facilitate such participation should contact the following at least 10 days prior to the hearing:

<b>ADA Contact:</b>	Laura Stewart, Human Resource Director
<b>Address:</b>	404 James Robertson Parkway, Suite 1900, Nashville, TN 37243
<b>Phone:</b>	615-532-8251
<b>Email:</b>	laura.stewart@tn.gov

**Hearing Location(s)** (for additional locations, copy and paste table)

Address 1:	Parkway Towers		
Address 2:	404 James Robertson Parkway		
City:	Nashville		
Zip:	37243		
Hearing Date :	October 6, 2016		
Hearing Time:	1:00 p.m.	<input checked="" type="checkbox"/> CST/CDT	<input type="checkbox"/> EST/EDT

**Additional Hearing Information:**

The hearing will be held in the Commission Boardroom on the 18th Floor of Parkway Towers. These proposed rules are identical to emergency rules filed with the Department of State, Division of Publications on August 15, 2016, with an effective date of October 3, 2016. Written comments must be received by October 6, 2016, to ensure consideration. All comments should be directed to: Tennessee Higher Education Commission, Attn: Julie M. Woodruff, Parkway Towers, Suite 1900, 404 James Robertson Parkway, Nashville, TN 37243-0830.

**Revision Type (check all that apply):**

- Amendment
- New
- Repeal

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

Repealed and Amended:

<b>Chapter Number</b>	<b>Chapter Title</b>
1540-01-02	Authorization and Regulation of Postsecondary Education Institutions and Their Agents
<b>Rule Number</b>	<b>Rule Title</b>
1540-01-02-.01	Preface
1540-01-02-.02	Role of Commission, Committee and Staff
1540-01-02-.03	Definitions
1540-01-02-.04	Determinations for Required Authorization
1540-01-02-.05	Exemption
1540-01-02-.06	Minimum Authorization Standards and Requirements
1540-01-02-.07	Institutional Applications
1540-01-02-.08	Regulations for Specific School Types
1540-01-02-.09	Annual Renewal for Authorization
1540-01-02-.10	Required Minimum Standards
1540-01-02-.11	Institutional Catalog
1540-01-02-.12	Admissions Standards
1540-01-02-.13	Enrollment Agreements and Disclosure Standards
1540-01-02-.14	Financial Standards
1540-01-02-.15	Institutional and Student Records
1540-01-02-.16	Personnel and Instructor Qualifications
1540-01-02-.17	Cancellation and Refund
1540-01-02-.18	Prohibited Acts
1540-01-02-.19	Fair Consumer Practices and Student Complaints
1540-01-02-.20	Advertising and Solicitation
1540-01-02-.21	Authorization Status
1540-01-02-.22	Causes for Adverse Action
1540-01-02-.23	Institutional Closure
1540-01-02-.24	Tuition Guarantee Fund (TGF)
1540-01-02-.25	Fees
1540-01-02-.26	Reserved

New:

<b>Chapter Number</b>	<b>Chapter Title</b>
1540-01-10	Regulation of Postsecondary Educational Institutions with Optional Expedited Authorization (OEA)
<b>Rule Number</b>	<b>Rule Title</b>
1540-01-10-.01	Incorporation of Rules
1540-01-10-.02	Definitions
1540-01-10-.03	Eligibility and Application Requirements
1540-01-10-.04	Required Notifications to Commission Staff
1540-01-10-.05	Denial of OEA Status
1540-01-10-.06	Revocation of OEA Status
1540-01-10-.07	Complaints
1540-01-10-.08	Filing Method and Requirements
1540-01-10-.09	Fees

(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to <http://state.tn.us/sos/rules/1360/1360.htm>)

## Amendments

Chapter 1540-01-02, Authorization and Regulation of Postsecondary Education Institutions and Their Agents, is amended by deleting the chapter in its entirety and substituting the following language so that, as amended, the chapter shall read:

### RULES OF THE TENNESSEE HIGHER EDUCATION COMMISSION CHAPTER 1540-01-02 AUTHORIZATION AND REGULATION OF REGULARLY AUTHORIZED POSTSECONDARY EDUCATIONAL INSTITUTIONS

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#### 1540-01-02-01 PREFACE.

- (1) The Commission invites continuous, constructive cooperation with institutions, civic organizations, governmental agencies, Better Business Bureaus, students and others to ensure the enforcement and improvement of these standards for better service to all consumers. The observance of these rules is the responsibility of each institution for the inherent advantage to each institution and for the common good of all institutions.
- (2) These rules are complementary to the Tennessee Higher Education Authorization Act of 2016 at Title 49, Chapter 7, Part 20. Institutions and agents must comply with the current language of the Act and these rules.

Authority: T.C.A. § 49-7-2014.

1540-01-02-.02 ROLE OF THE COMMISSION, EXECUTIVE DIRECTOR, COMMITTEE, AND COMMISSION STAFF.

- (1) Role of the Tennessee Higher Education Commission (THEC or Commission):
  - (a) The Commission at each quarterly meeting shall consider recommendations from the Committee on Postsecondary Educational Institutions and the Division of Postsecondary State Authorization regarding authorizations, program approvals, and any other matter at the request of the Commission's Executive Director.
- (2) Role of the Tennessee Higher Education Commission Executive Director:
  - (a) The Executive Director is empowered to take any urgent action in furtherance of the Act during the periods between Commission meetings, provided that:
    1. the Executive Director gives written notice of such action to the affected party;
    2. the Executive Director notifies the affected party that they may notify the Commission within ten (10) business days if the aggrieved party desires a hearing and review by the Commission, and that otherwise the action shall be deemed final; and
    3. at the same time the Executive Director gives written notice of the action to members of the Commission.
  - (b) Whenever Commission staff cannot resolve a complaint or a dispute involving the Act or these rules, the Executive Director upon a written request from an aggrieved party that in the view of the Executive Director is justifiable will provide a review and/or hearing for parties involved prior to presentation of the unresolved complaint or dispute to the Commission.
  - (c) On the advice of Commission Staff, the Executive Director, in consultation with the Commission, is authorized to waive these rules upon well documented extraordinary cause, where necessary to protect the public interest, and when consistent with the Act.
  - (d) The Executive Director may exempt a program or activity from authorization or from compliance with a specific rule if such an exemption can be demonstrated to be in the public interest. Such exemptions should be temporary and narrow in scope and be subject to annual review.
  - (e) The Executive Director is empowered to act in the following matters, subject to a hearing and review by the Commission upon the request of the aggrieved party in the manner provided by T.C.A. § 49-7-2010(b):
    1. assess fines under the Act and these rules;
    2. intervene to alter, place conditions on, suspend, or revoke, in full or in part, an institution's or agent's authorization to operate; and
    3. issue temporary or conditional authorization.
- (3) Role of the Committee on Postsecondary Educational Institutions (Committee):
  - (a) The Committee shall meet quarterly or at the call of the Chairman of the Committee, at the call of a majority of the Committee members, or at the call of the Chairman of the Commission to serve as an advisory committee to the Commission.
  - (b) At meetings, the Committee may take any action delegated to it by the Commission

pursuant to T.C.A. § 49-7-207, including, but not limited to, making recommendations on:

1. applications for authorization;
  2. applications for program approvals;
  3. proposed rules; and
  4. consideration of such other matters relating to the Act at the request of the Executive Director.
- (c) The Committee and, as needed, other experts appointed by the Executive Director, may participate in institution site visits for purposes of evaluating compliance with the Act and these rules;
- (d) The Committee shall exercise such other powers and undertake such other obligations as are delegated to it by the Commission under the provisions of the Act.
- (e) The Chairman of the Committee may appoint subcommittees as needed.
- (4) Role of the Commission Staff:
- (a) Beginning October 1, 2016, the office and Commission Staff responsible for oversight of the Act and Rule Chapters 1540-01-02 and 1540-01-10 shall be officially referred to as the Tennessee Higher Education Commission, Division of Postsecondary State Authorization (DPSA).
  - (b) Commission Staff shall perform site visits and/or audits to review, inspect, and investigate locations as necessary to ensure compliance with the Act and these rules. Site visits or audits may be conducted at the discretion of Commission Staff for reasons including, but not limited to, authorization determinations, program approvals, complaints, investigations, compliance checks, or any situation that may adversely affect students or people at the institution.
  - (c) Commission Staff shall investigate as necessary any activity believed to create a physical presence in Tennessee to verify adherence to the Act and these rules or to determine whether an exemption is appropriate.
  - (d) Commission Staff shall establish due dates for submission of all fees, applications, and other materials to be included on the agenda for meetings of the Committee.
  - (e) Commission Staff may share with state or federal agencies information on institutions seeking, holding, or required to be authorized by the Commission as well as any unauthorized educational operations. Commission Staff may share with appropriate accrediting bodies any adverse action recommended or taken by Commission Staff, the Executive Director, Committee, or Commission.
  - (f) Commission Staff may recommend that the Executive Director take adverse action as described in Rule .22 of these rules.

Authority: T.C.A. §§ 49-7-2004 and 49-7-2014.

#### 1540-01-02-.03 DEFINITIONS.

- (1) "Ability-to-benefit" or "ATB" as an adjective describes:
  - (a) a student who has not provided proof of receiving a high school diploma or equivalency, but who has demonstrated by successfully passing an ability-to-benefit test that the student possesses the cognitive or physical skills needed to benefit from a course or certificate or diploma program; or

- (b) a test given by an authorized institution to determine whether a student possesses the cognitive or physical skills to benefit from a certificate or diploma program.
- (2) "Academic" as an adjective describing a degree means a degree that is organized primarily for academic training or transfer. Academic degrees include: Associate of Arts, Associate of Science, Bachelor of Arts, Bachelor of Business Administration, Bachelor of Science, Bachelor of Fine Arts, Master of Arts, Master of Science, Master of Fine Arts, Master of Business Administration, Doctor of Philosophy, Doctor of Psychology, and Doctor of Education.
- (3) "Accreditation" is a non-governmental, peer evaluation of educational institutions and programs by 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.
- (4) "Act" means the Tennessee Higher Education Authorization Act of 2016, T.C.A. §§ 49-7-2001, et seq., as amended.
- (5) "Adverse action" means action taken by the Executive Director or Commission to fine, limit, change, suspend, or cause to cease activity that is not compliant with the Act and these rules. Such adverse action includes fines of five hundred dollars (\$500) per violation per day, suspension of activity, conditional authorization, or revocation of authorization or approval.
- (6) "Agent" means any person representing a postsecondary educational institution for payment, who solicits in any form and enrolls, or seeks to enroll, a student for education offered by an authorized institution, or offers to award educational credentials, for remuneration, on behalf of any such institution. Persons owning an interest in an institution and the institution's full-time employees and directors shall not be considered agents under this part.
- (7) "Agent's permit" means a nontransferable written authorization issued to a natural person by Commission Staff that allows that person to solicit, recruit, or enroll students for education in an authorized postsecondary educational institution.
- (8) "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.
- (9) "Associate's degree" means a credential issued to students who complete a vocational or academic program or curriculum consisting of at least sixty (60) semester credit hours, ninety (90) quarter credit hours, or the equivalent.
- (10) "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."
- (11) "Authorization site visit" means an institutional site visit conducted by Commission Staff or a Committee member to verify a location or program is compliant with the Act and these rules.
- (12) "Bachelor's degree" means a credential issued to students who complete a vocational or academic program or curriculum consisting of at least one hundred and twenty (120) semester credit hours, one hundred and eighty (180) quarter hours, or the equivalent.
- (13) "Certificate program" generally means one (1) or more technical courses usually completed in one (1) to twenty-six (26) weeks, or up to and including five hundred (500) contact hours normally

with a single skill objective.

- (14) "Clock Hour" has the same meaning as contact hour.
- (15) "Closed enrollment" means instruction provided to a group or business by a postsecondary educational institution, whereby public solicitation does not occur and the institution is given a list of enrollees to train at no cost to the students.
- (16) "College" means (1) a unit of a university offering specialized degrees or (2) a postsecondary educational institution offering courses of study leading to a degree.
- (17) "Commission" means the Tennessee Higher Education Commission.
- (18) "Committee" means the Committee on Postsecondary Educational Institutions.
- (19) "Completion rate" shall have the same meaning as "graduation rate," and shall mean the number of completions as a percentage of the number of students not currently enrolled minus the number of withdrawals due to special circumstances, that is,  $\text{Completion Rate} = \frac{\text{Number of Completions}}{\text{Number Not Currently Enrolled} - \text{Special Circumstance Withdrawals}} \times 100$ .
- (20) "Contact hour" means a sixty (60) minute period of time that contains at least fifty (50) minutes of actual directed or supervised instructional time.
- (21) "Degree" means an educational credential from a postsecondary educational institution with the term associate, bachelor, masters, specialist, or doctor in the credential designation.
- (22) "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.
- (23) "Diploma program" means a program of instruction offering technical and some basic course work. General education courses may be included. Program requirements generally range from more than five hundred (500) contact hours to less than the requirements for an Associate degree.
- (24) "Distance learning" means a system and process that connects learners with distributed learning resources through delivery systems at a distance such as correspondence, video tape, audio tape, telecommunications, computer resources, computer network system or an electronic delivery system, where there is physical separation of the instructor and student.
- (25) "Division of Postsecondary State Authorization" or "DPSA" means the office and Commission staff responsible for oversight of the Act and Rule Chapters 1540-01-02 and 1540-01-10.
- (26) "Doctoral degree" means a credential issued to students who complete a program consisting of a bachelor's degree plus at least ninety (90) semester hours of graduate credit, one hundred and thirty-five (135) quarter hours of graduate credit, or the equivalent.
- (27) "Enrollment" refers to those students who have attended one (1) session of class, turned in one (1) assignment, or received one (1) distance learning lesson.
- (28) "Educational credentials" means degrees, diplomas, certificates, transcripts, reports, documents, or letters of designation, marks, appellations, series of letters, numbers or words which signify, purport or are generally taken to signify enrollment, attendance, progress or satisfactory completion of the requirements or prerequisites for education at a postsecondary educational institution.
- (29) "Educational service" means any class, course or program of training, instruction or study.
- (30) "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.

- (31) "General education courses" means academic subjects intended to broaden communication/language skills, contribute to the intellectual growth of the student and give balance to the total program beyond the area of vocational or professional concentration.
- (32) "Independent certified public accountant" means a certified public accountant not associated with the institution, its owners, or its affiliated businesses.
- (33) "In-field placement rate" means the Number Placed In-Field as a percentage of number placeable, that is,  $\text{In-Field Placement Rate} = \text{Number Placed In-Field} / \text{Number Placeable} \times 100$ .
- (34) "Institutional director" means the individual designated by the institution to assume responsibility for ensuring that the conduct of the institution and its agents are within the Act and these rules.
- (35) "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.
- (36) "Location" means an address that is zoned for commercial purposes for use as a postsecondary educational institution.
- (37) "Master's degree" means a credential issued to students who complete a program consisting of a bachelor's degree plus at least thirty (30) semester credit hours, forty-five (45) quarter credit hours, or the equivalent.
- (38) "Non-degree-granting postsecondary educational institution" includes all postsecondary educational institutions that do not meet the definition of a degree-granting postsecondary educational institution. Non-degree granting postsecondary institutions are frequently referred to as "career," "vocational," or "technical" schools. Non-degree granting postsecondary educational institutions are institutions offering programs designed primarily for job entry or upgrading of skills and usually measured in contact hours. These programs typically prepare individuals for employment and do not require courses beyond those specific to the job or its field with program length sufficient to affect outcomes.
- (39) "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.
- (40) "Out-of-state institution" means an authorized postsecondary educational institution that maintains its primary campus in another state, but has a physical presence in Tennessee.
- (41) "Ownership" means ownership of a controlling interest in the institution or in the event the institution is owned or controlled by a corporation or other legal entity other than a natural person or persons, ownership of a controlling interest in the legal entity owning or controlling the institution.
- (42) "Physical presence" means presence within the state of Tennessee for the purpose of conducting activity related to a postsecondary educational institution as given in T.C.A. § 49-7-2007. Physical presence as further outlined for purposes of authorization shall include:
- (a) operating an instructional site within the state;
  - (b) offering instruction within or originating from Tennessee designed to impart knowledge with response utilizing teachers, trainers, counselors or computer resources, computer linking, or any form of electronic means;
  - (c) granting an educational credential from a location within the state;
  - (d) using an agent, recruiter, institution, or business that solicits for enrollment or credits or for the award of an educational credential; or

- (e) advertising, disseminating promotional material or conducting public solicitation in any form that targets Tennessee residents or uses local advertising markets in the state for institutions seeking, holding, or required to be authorized by the Commission.
- (43) "Placement rate" means the number placed as a percentage of the number placeable, that is,  $\text{Placement Rate} = \text{Number Placed} / \text{Number Placeable} \times 100$ .
- (44) "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.
- (45) "Quarter" is a period of instruction into which the academic year is divided. A quarter must consist of at least ten (10) weeks.
- (46) "Quarter credit hour" means a measurement of scholastic attainment earned by receipt of instruction for one (1) quarter of one (1) classroom lecture hour per week, two (2) hours of laboratory experience per week, or three (3) hours of intern/externship experience per week, or the equivalent number of hours.
- (47) "Refundable fees" means any fees paid by or on behalf of the student to the institution but excluding fees paid for (1) tangible goods retained by the student or (2) services provided in full to the student.
- (48) "Residential course" means a course in which the student comes to an institution's authorized location as opposed to a course where the student and the instructor are in different locations.
- (49) "Semester" is a period of instruction into which the academic year is divided. A semester must consist of at least fifteen (15) weeks.
- (50) "Semester credit hour" means a measurement of scholastic attainment earned by receipt of instruction during one (1) semester of one (1) classroom lecture hour per week, two (2) hours of laboratory experience per week, or three (3) hours of intern/externship experience per week or the equivalent number of hours.
- (51) "Solicitation" means contact, written or verbal, on behalf of an institution for the purpose of supplying information in an attempt to enroll Tennessee residents.
- (52) "Specialist Degree" means an advanced master's degree or post-master's degree with requirements less than those required for a doctoral degree.
- (53) "These rules" means all rules contained in Rule Chapter 1540-01-02.
- (54) "Time to completion" means the total number of days from a student's start date until the completion date.
- (55) "Tuition" means any fee involving the student, actually charged or tracked as a bookkeeping item for instruction provided. Pursuant to Rule .15(4) of these rules, all tuition charges must clearly indicate the period of enrollment for which the student is being charged, for example, if the program is a four (4) month program but the tuition charged is for one (1) month, the account statement might read "Tuition Charged for Month 1."
- (56) "Tuition guaranty fund" means the tuition guaranty fund created by T.C.A. § 49-7-2018 and the related rules in Rule Chapter 1710-01-02.
- (57) "Unearned tuition" means the dollar amount calculated pursuant to T.C.A. § 49-7-2018 and the related rules in Rule Chapter 1710-01-02.

- (58) "University" means a postsecondary educational institution that provides facilities for teaching and research, offers academic undergraduate and graduate degrees at the baccalaureate and higher level, and is organized into largely independent colleges or schools offering undergraduate, graduate, and/or professional programs.
- (59) "Vocational" in the description of a program or institution means that which is organized primarily for job entry or upgrading of job skills that would result in a new job title or position and is not intended for academic transfer.
- (60) "Withdrawal rate" means the number of withdrawals minus the number of withdrawals due to special circumstances as a percentage of program enrollment, that is,  $\text{Withdrawal Rate} = (\text{Number of Withdrawals} - \text{Special Circumstance Withdrawals}) / \text{Program Enrollment} \times 100$ .

Authority: T.C.A. §§ 49-7-2003 and 49-7-2005

#### 1540-01-02-.04 DETERMINATION FOR REQUIRED AUTHORIZATION.

- (1) No location of a postsecondary educational institution may create a physical presence unless the location is authorized by an affirmative vote of the Commission during a public meeting or is exempt. Authorization includes regular, temporary, and conditional authorization referred to in this Rule Chapter as well as optional expedited authorization referred to in Rule Chapter 1540-01-10.
- (2) Commission Staff may recommend that the Executive Director take adverse action against any unauthorized individual, business, or institution requiring authorization as a postsecondary educational institution. Such entities must make an immediate good faith effort toward compliance by submitting an Initial Authorization Application or Optional Expedited Authorization Application, as provided in Rule Chapter 1540-01-10, and the applicable fee by the due date provided by Commission Staff.

Authority: T.C.A. §§ 49-7-2002, 49-7-2003, 49-7-2005, 49-7-2006, 49-7-2011, and 2016 Public Acts Ch. 868.

#### 1540-01-02-.05 EXEMPTIONS.

- (1) T.C.A. § 49-7-2004 of the Act includes general descriptions of institutions and programs that are exempt from the provisions of the Act and these rules. Institutions and programs meeting the specific provisions below shall be considered exempt pursuant to the general exemption descriptions of T.C.A. § 49-7-2004.
  - (a) Subject to subparagraph (b) of this rule, education that is:
    - 1. maintained or given by an employer or group of employers, for employees or for persons they anticipate employing at no cost to the individual;
    - 2. maintained or given by a U.S. Department of Labor or state recognized labor organization (1) to its membership or apprentices or (2) at no cost to the individual;
    - 3. financed and/or subsidized by public funds, at no cost to the individual, and having a closed enrollment; or
    - 4. given under a contract agreement, having a closed enrollment, at no cost to the individual, and does not offer educational credentials that in the opinion of Commission Staff are specifically directed toward new or additional vocational, professional, or academic goals.
  - (b) For purposes of subparagraph (a) of this rule, payroll deductions, minimum employment periods as a result of a company's investment in the employee, fees levied if an individual leaves that employment, or similar practices shall constitute cost to the individual, except that the employer may accept funds provided through a state or federal program that provides adequate institutional and/or programmatic review as determined by Commission Staff.

- (c) Programs, seminars, or workshops that are recreational or avocational, including, but not limited to, motivational or enrichment programs, as determined by Commission Staff shall be considered exempt from authorization requirements. Upon review by Commission Staff, a provider that presents the instruction in such a way as to suggest a vocational end may be required to become authorized or clarify through public advertising that the program, seminar, or workshop is in fact recreational or avocational.
  - (d) Short-term programs, seminars, or workshops that are solely for professional enhancement as determined by Commission Staff shall be considered exempt from authorization requirements. Education resulting in specialized certifications clearly used to denote technical, professional, or vocational proficiency toward an additional vocational goal or new job title must be authorized for operation.
  - (e) Intensive review courses designed solely to prepare students for graduate or professional school entrance exams and professional licensure exams shall be considered exempt from authorization requirements. This exemption applies only when the review course is not designed to provide the initial training in the subject area.
  - (f) Training designed to prepare students for credit-by-examination tests may be considered exempt from authorization requirements. The exemption is contingent on the entity's agreement to indicate in all promotional materials that the training is for test preparation for credit-by-examination tests and refrain from any misleading representations. Such misleading representations include:
    1. suggesting in any way that the training results in receipt of an educational credential, such as a degree;
    2. listing anticipated salary amounts; and
    3. suggesting that the entity is accredited.
  - (g) Businesses offering limited computer training in hardware, software, delivery systems or any related technology for clients or customers directly related to a sale of equipment or services are exempt from the provisions of authorization.
  - (h) Businesses offering short-term computer courses in common software or basic computer hardware that is intended for enrichment or professional enhancement are exempt from the provisions of authorization unless in the opinion of Commission Staff the courses are offered concurrently toward a vocational goal.
- (2) Any institution or program that qualifies as exempt under the Act and these rules is exempt from authorization without a determination of the Commission. However, institutions can request that Commission Staff issue a written determination of exemption for the institution as a whole or for any program. Commission Staff can revoke or amend an exemption determination if the basis for the exemption changes or no longer exists.
  - (3) Except as provided in paragraph (4) of this rule, to request a determination of exemption, institutions shall submit an Exemption Application along with a descriptive narrative explaining how the institution or program qualifies for an exemption. The application shall require a citation to the exemption provision relied on in the Act and these rules and documentation supporting the requested exemption such as: copies of all institutional materials; brochures; advertising; state charter or business license; or organizational ties and/or contracts with other educational providers. Upon receipt of an Exemption Application, Commission Staff shall make a written determination and, if denied, provide a date by which an aggrieved institution may submit a request for further review by the Executive Director. Such date shall not be earlier than ten (10) business days after the date of the written determination.
  - (4) Institutions that are exempt pursuant to T.C.A. § 49-7-2004(a)(6) shall submit the Information Request Form in order to obtain a determination of exemption.

- (5) If the institution is aggrieved by a determination concerning exemption status, the institution may seek review as provided for in Rule .02(2)(b) of these rules. 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 paragraph (3) of this rule.

Authority: T.C.A. §§ 49-7-2002, 49-7-2003, 49-7-2004, 49-7-2005, 49-7-2006 and 49-7-2008.

#### 1540-01-02-.06 MINIMUM STANDARDS FOR AUTHORIZATION.

- (1) Institutions authorized to operate or seeking authorization to operate in Tennessee must meet the minimum standards for authorization stated in the Act and these rules. Commission Staff shall verify that an institution meets minimum standards for authorization through review of applications, including, but not limited to, Initial Authorization Applications, New Program Applications, Program Revision Notification, School Personnel Applications, and Reauthorization Applications.
- (2) No out-of-state institution will be considered for authorization if it is not authorized in the state where it is primarily located.
- (3) In relation to the size and scope of the institution, it shall furnish adequate student services and resources to fulfill the mission and claims of the institution. Such services must have staff available to students with the knowledge and skills in areas such as: academic standing and satisfactory progress, admissions, employment opportunities or placement, intern/externships, library, and financial aid.
- (4) Administrative capability must be demonstrated in the daily operational standards at the institution. Administrative capability is the ongoing effective operation of the institution such that the institution is able to comply with and, as applicable, coordinate federal, state and accreditation requirements in a positive and educationally enriching environment to the benefit of students. Indicators of a breakdown of administrative capability include: reoccurring violations in the same area, numerous student complaints during the year, failure to correct compliance issues, frequent or sudden turnover in faculty or staff, or multiple findings in several different areas.
- (5) Institution Name:
- (a) An institution's name may not duplicate another institution name or mislead potential students in violation of fair consumer practices or suggest guaranteed employment, completion, or other outcomes.
- (b) An institution may not use the word university in its name unless the institution meets the definition of university in these rules and has been so approved by a regional accrediting body so recognized by the U.S. Department of Education.
- (c) An institution may use the word college in its name without a qualifier if the institution:
1. meets the definition of college as set forth in these rules;
  2. has been approved by an accrediting body recognized by the U.S. Department of Education to offer degree level programs; and
  3. offers or is seeking approval to offer at least one (1) degree program.
- (d) An unaccredited or non-degree granting postsecondary educational institution may use the word college in its name as long as the name contains an appropriate qualifier, such as career, vocational, or Bible. For institutions authorized after October 1, 2016, the qualifier shall precede the word college.

Authority: T.C.A. §§ 49-7-2002, 49-7-2004, 49-7-2005, 49-7-2006, 49-7-2007, 49-7-2008.

1540-01-02-.07 INSTITUTIONAL APPLICATIONS.

- (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 Initial Authorization Applications, New Program Applications, and Reauthorization Applications. Applications shall be received at the Commission on 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) Initial Authorization Application:
  - (a) Institutions must demonstrate through the Initial Authorization Application that the institution meets minimum standards for authorization as provided for in the Act and these rules. The application shall require at a minimum:
    1. a name of the institution that complies with the Act and these rules;
    2. 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;
    3. evidence of a business account with a financial institution that is federally insured in said institution's name;
    4. a description of the ownership of the institution, including names and contact information for owners or board of director members, percentage of ownership, and, when applicable, a corporate flowchart showing the institution's position in relationship to all affiliated corporate entities;
    5. the address and general description of facilities such that a determination can be made that the institution has adequate space, equipment, and instructional material to provide education of good quality;
    6. evidence demonstrating that the location is commercially zoned and that possession of the location is stable such that the institution will be able to use the location for a minimum of one (1) year from the date of application. Month-to-month leases are not acceptable;
    7. qualifications for instructional staff and supervisors;

8. designation of and contact information for an institutional director for each location and an affirmation from the director that he or she will conduct the institution in accordance with the Act and rules;
9. a description of any administrative structure above the institutional director with the signature of the official that will notify the Commission if the director is replaced;
10. a continuous institutional surety bond;
11. a copy of the enrollment agreement the institution will use following receipt of authorization;
12. a copy of the pre-enrollment checklist the institution will use following receipt of authorization;
13. a copy of the institutional catalog the institution will use following receipt of authorization;
14. a copy of the student transfer of credit disclosure statement required by T.C.A. § 49-7-144;
15. any specific requirements as outlined under Rule .08 of these rules;
16. affirmation that the institution is maintained and operated in compliance with all pertinent ordinances and laws, including, but not limited to, rules and regulations adopted pursuant to ordinances and laws relative to the safety and health of all persons upon the premises;
17. if participating in Title IV federal student financial aid programs,
  - (i) the institution's Office of Postsecondary Education Identification (OPEID) number;
  - (ii) the most recently calculated three-year official cohort default rate from the Office of Federal Student Aid of the U.S. Department of Education; and
  - (iii) 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;
18. institutions must provide current or pro forma financial statements evidencing institutional financial resources adequate to fund and maintain the following:
  - (i) facility maintenance and overhead;
  - (ii) staff and faculty payroll;

- (iii) books, supplies or equipment utilized by students; and
  - (iv) general operating costs;
19. provide financial statements as follows:
- (i) as to institutions that are not currently operating a location in Tennessee or out-of-state, pro forma financial statements demonstrating that the location for which authorization is being sought will within the first three (3) years following receipt of initial authorization meet the ratios described in Rule .14(6)(d) of these rules and financial statements of all owners; or
  - (ii) as to institutions that are operating a location in Tennessee or out-of-state, pro forma financial statements demonstrating that the location for which authorization is being sought will within the first three (3) years following receipt of initial authorization meet the ratios described in Rule .14(6)(d) of these rules and the most recent financial statements of the existing entity; and
20. such other information or clarification deemed necessary by Commission Staff.
- (b) A separate application for authorization must be made for each location located outside of reasonable walking distance from a previously authorized location. Commission Staff may make reasonable exceptions for narrow purpose, highly structured programs at multiple locations where administrative requirements are limited and precise.
- (3) Reauthorization Application:
- (a) Effective January 1, 2018, institutions with regular, temporary, or conditional authorization shall file a reauthorization application by the due date for the Committee meeting that is approximately one (1) year from the institution's initial authorization date. In order to efficiently transition to this process in 2017, Commission Staff will post on its website by October 3, 2016, a schedule for institutions to follow in 2017 to obtain reauthorization prior to the current authorization expiration date of June 30, 2017. If necessary to effectuate the transition, the Executive Director may extend an institution's authorization.
  - (b) Institutions must demonstrate through the Reauthorization Application that the institution continues to meet the minimum standards for authorization as provided for in the Act and these rules. The application shall require at a minimum:
    1. updates to information previously submitted as part of other applications;
    2. information related to required student enrollment documentation, such as enrollment agreements and disclosures;
    3. financial statements for the most recent institutional fiscal year as given under Rule .14 of these rules;
    4. a list of institutional personnel;
    5. funding data for students enrolled during the reporting year, including, but not limited to, the amount of self-pay and state or federal aid program funds;
    6. student data related to licensure examination passage rates as further explained in Rule .08(4) of these rules;
    7. statistical data as described in Rule .27 of these rules; and
    8. such other information or clarification deemed necessary by Commission Staff.

- (4) Change of Ownership Application:
- (a) Authorization to operate cannot be transferred.
  - (b) The sale or transfer of an ownership interest after the death of an owner of an institution to either an approved partner or current stockholder of the corporation is not considered a change in ownership. The Executive Director may determine that other similar transfers should also be excluded from these requirements.
  - (c) In the event of a change of ownership, as defined in Rule .03(41) of these rules, the new owner or governing body must submit to Commission Staff within ten (10) business days after the change in ownership is finalized:
    - 1. a Change of Ownership Application and
    - 2. a request that the Executive Director grant the new owner or governing body conditional authorization to operate until the new owner or governing body obtains temporary authorization.
  - (d) The new owner or governing body shall submit an Initial Authorization Application by the first quarterly filing due date after filing the Change of Ownership Application.
  - (e) The Change of Ownership Application shall require that the new owner or governing body provide the sales contract, bill of sale, deed, or other documents necessary to transfer ownership of the institution.
- (5) New Program Application and Program Revision Notification:
- (a) In order to offer a program, an institution must submit a New Program Application either along with an Initial Authorization Application or, for previously authorized institutions, as a stand-alone application. Program approval by the Commission is required prior to offering the program, which includes enrolling, advertising, recruiting or soliciting. Applications must be received by the quarterly due date established by Commission Staff.
  - (b) The New Program Application shall include at a minimum:
    - 1. general program information, such as the program name, proposed start date, anticipated initial enrollment, itemized tuition and other fees, delivery mode, length, number of credits or contact hours, and accreditation status. When program lengths exceed standard times or program periods established by these rules, the institution must justify expansion of training in terms of exceptional student benefits;
    - 2. designation of the credential awarded which conforms to the requirement that no institution may offer instruction leading to an academic degree unless the institution is approved by a regional accrediting body recognized by the U.S. Department of Education. An exception may be approved by the Executive Director upon recommendation of Commission Staff. Any request for exception shall be made in writing and include proof of the following:
      - (i) the institution is accredited by an U.S. Department of Education approved accreditor for the specific degree type; the program is accredited by the appropriate accrediting agency if such accreditation is necessary for employment in or licensure by the state; and the institution has articulation and transfer of credit agreements with two (2) regionally accredited institutions both having a physical location in the Southeast region; or
      - (ii) special or unique circumstances.

3. if applicable, evidence of approval from any subject matter expert state agency, board, or commission;
4. a program overview;
5. syllabi for courses or, for short programs, an outline and description of the training;
6. a job title and the associated Classification of Institutional Programs (CIP) code applicable to the job title;
7. the most currently available entry level salary or wage data for those CIP codes from a Tennessee or federal website;
8. admission criteria;
9. instructor qualifications and, when applicable, School Personnel Applications;
10. library holdings and in-house resources available to students related to the program;
11. a list of training equipment, indicating whether the equipment is owned or leased;
12. a description of how this program is consistent with the institution's mission;
13. a description of how the institution is structured (administration, staff and resources) to ensure educational quality;
14. if applicable, a list of all clinical or externships sites with a copy of an affiliation agreement with each site;
15. The maximum pupil to teacher ratio for each course. Acceptable ratios, without special permission from the Commission, are as follows:
  - (i) lecture: 40-1;
  - (ii) allied health and nursing labs: 20-1;
  - (iii) class A truck cab: 4:1; and
  - (iv) class B truck cab: 2:1.
16. if applicable, distance learning specific information, such as:
  - (i) a mock password so that Commission Staff can navigate through the online system used for instruction;
  - (ii) an explanation as to how educational goals and overall program goals are achievable through distance learning; and
  - (iii) an explanation as to how graduates of the program will exhibit skills and knowledge equivalent to similar residential programs; and
17. such other information or clarification deemed necessary by Commission Staff.

- (c) When an institution revises an approved program, then the institution must seek approval from Commission Staff by submitting a Program Revision Notification at least thirty (30) days prior to implementing the revision. If the program revision amounts to change of more than twenty-five percent (25%) in the last twelve (12) months or if Commission Staff determines a significant revision has occurred, then the institution must submit a New Program Application prior to implementing the revision.

- (d) Institutions shall not arbitrarily add a course to an existing program in which a student would incur additional time or expense beyond the catalog requirements at the time of enrollment, unless the addition is in response to:
  - 1. demonstrated educational necessity;
  - 2. a reasonable program completion period elapsed;
  - 3. state approval agency requirements;
  - 4. U.S. Department of Education recognized accreditor requirements; or
  - 5. professional licensure requirements.

In any event, the institution shall provide written notification to Commission Staff and give adequate notice to all students affected prior to any change.

(6) Change of Location Application:

- (a) Absent extraordinary circumstances, an authorized institution shall submit a Change of Location Application thirty (30) days prior to moving. An example of an extraordinary circumstance is the unexpected loss of a lease.
- (b) The Change of Location Application shall include at a minimum:
  - (i) the address and general description of facilities such that a determination can be made that the institution has adequate space, equipment, and instructional material to provide education of good quality;
  - (ii) evidence demonstrating that the location is commercially zoned and that possession of the location is stable such that the institution will be able to use the location for a minimum of one (1) year from the date of application. Month-to-month leases are not acceptable;
  - (iii) affirmation that the institution is maintained and operated in compliance with all pertinent ordinances and laws including, but not limited to, rules and regulations adopted pursuant to ordinances and laws, relative to the safety and health of all persons upon the premises; and
  - (iv) such other information or clarification deemed necessary by Commission Staff.
- (c) Commission Staff shall approve the application after it determines that the application is complete and conducts a successful site visit.
- (d) If a move is beyond ten (10) miles and a student is prevented from completing the training at the new location, a full refund of all moneys paid and a release from all obligations will be given to the student or loan holder.

(7) School Personnel Application:

- (a) Authorized Institutions must provide and maintain qualified faculty and staff in order to fulfill the mission of the institution and all obligations to the students. Qualifications must be submitted to Commission Staff on a School Personnel Application no later than ten (10) business days after the hire date.
  - 1. Unaccredited institutions must submit to Commission Staff School Personnel Applications for all instructors and administrative personnel as that term is defined in subparagraph (7)(b) of this rule.
  - 2. Institutions accredited by an accrediting body recognized by the U.S. Department

of Education must submit to Commission Staff School Personnel Applications for all administrative personnel as that term is defined in subparagraph (7)(b) of this rule. For each instructor, an accredited institution shall maintain on-site documentation that demonstrates the minimum qualifications and must submit such documentation and a School Personnel Application at any time upon request from Commission Staff.

- (b) Administrative personnel are individuals that oversee areas as outlined in operational and administrative standards. This includes by function, but is not limited to titles of an institutional director; financial aid administrator; director of admissions; director of education; business officer or manager; director of student services (including counseling and placement) and the registrar. Support and clerical staff is not included as administrative personnel.

(8) Agent Permit Application:

- (a) Agents must submit an Agent Permit Application, as provided by Commission Staff, and must receive approval and an agent permit from Commission Staff prior to any solicitation. The application shall include at a minimum:
  - 1. general contact information for the agent;
  - 2. recommendations by two (2) reputable persons certifying that the applicant is of good character and reputation;
  - 3. a surety bond as specified in Rule .09 of these rules; and
  - 4. certification by the institution director that the applicant will be directed to act in accordance with the Act and these rules.
- (b) Agent permits must be renewed every year. The expiration date of a permit is one (1) year from the date of issue or immediately upon termination of employment whichever occurs first.
- (c) Agents must have separate permits to represent separate institutions unless the institutions have common ownership such that the institutions present a common name to the public and have the same mission. Mutual agreement by institutions is required.
- (d) All agents must verify by signature that they have read and are familiar with rules on advertising and solicitation and must verify intent to follow rules as set forth in Fair Consumer Practices.

(9) Institution Name Change Application:

- (a) An authorized institution shall submit an Institution Name Change Application thirty (30) days prior to changing the institution's name unless the name change is the result of a change of ownership. In the case of a change of ownership, the authorized institution shall submit a Change of Ownership Application.
- (b) The Institution Name Change Application shall include at a minimum:
  - 1. updated contact information;
  - 2. a proposed new name of the institution that is compliant with these rules;
  - 3. updated surety bond information;
  - 4. an updated copy of the pre-enrollment checklist, enrollment agreement, and catalog; and
  - 5. such other information or clarification deemed necessary by Commission Staff.

Authority: T.C.A. §§ 49-7-2005, 49-7-2006, 49-7-2007, 49-7-2008 and 49-7-2013.

1540-01-02-.08 REGULATIONS FOR SPECIFIC INSTITUTIONS AND PROGRAMS.

- (1) Degree Granting Institutions:
  - (a) Authorization to offer any degree in the state will require either institutional accreditation by a U.S. Department of Education recognized accreditor or authority to grant degrees by affirmative vote of the Commission.
  - (b) Unaccredited institutions seeking authority to grant degrees must meet, in addition to the requirements in the Act and these rules for initial authorization, at a minimum:
    1. the institution shall incorporate instructional procedures, texts, and materials appropriate to the purpose, curriculum and standards of other degree granting postsecondary educational institutions offering similar programs in the state;
    2. for undergraduate and degree granting programs and except as noted further in subparagraph (c) of this rule, twenty-five percent (25%) of the total program must be in general education courses and should be indicated separately in the curriculum presented;
    3. library resources and holdings shall contain up-to-date titles, be available and accessible to all enrolled students and commensurate with the proposed degree level;
    4. demonstration that the degree and the program has merit and value academically, professionally, or vocationally in Tennessee; and
    5. master and doctorate level degrees must demonstrate in the curriculum and outcomes increasing levels of critical, analytical, and interpretive thinking, use of primary documents or resources, and independent research skills.
  - (c) Undergraduate degree programs must include at least twenty-five percent (25%) of the program in general education courses unless the institution can demonstrate program accreditation requirements which are lesser or for a unaccredited institution offering or proposing an associate degree level, demonstrate to the Commission that because of the occupational/technical nature of the program that a student would not benefit in the job from general education courses and demonstrate the need to use that twenty-five percent (25%) of the program for job skills courses.
  - (d) Graduate degree programs, in addition to staffing and study time requirements in these rules, must provide experienced research staff to direct graduate research papers, provide a program of sufficient length and arrangement to facilitate student-to-student and student-to-staff exchange of ideas, provide appropriately credentialed staff in collateral areas, and provide access to a wide range of current reference materials in the subject field.
- (2) Unaccredited institutions shall not accept funds for tuition prior to ten (10) business days of the scheduled start date of the course or program.
- (3) Bartending institutions:
  - (a) Pursuant to T.C.A. § 49-7-115, all schools involved in training in the areas of management, operation, procedures, or practice of dispensing alcoholic beverages or bartending shall include instruction in the problems of alcohol abuse and the effect of alcohol consumption on highway safety.
- (4) Programs leading to licensure, certification, registration or similar recognition:

- (a) Successful completion of an examination given by a private or public third-party cannot be part of an institution's program or be a completion requirement. For example, a truck driving program cannot include successful completion of the Commercial Driver's License examination.
  - (b) Institutions offering programs in fields that require a student to take an examination in order to be licensed or similarly recognized before the student can be employed in the field shall provide as part of the Reauthorization Application student-level data as to:
    - 1. whether the student sat for the examination; and
    - 2. whether the student passed the examination.
  - (c) Institutions may request a waiver from Commission Staff of subparagraph (4)(b) of this rule. Commission Staff shall grant the waiver upon receipt of documentation from the institution demonstrating that the examination provider or related state agency will not provide testing data to the institution.
- (5) For programs of interest to other state agencies, such as dental programs, Commission Staff will endeavor to streamline processes when a subject matter expert state agency has a law that is contrary or duplicitous of the Act or these rules.
  - (6) Computer Training:
    - (a) Businesses offering specialized certifications clearly used to denote technical, professional or vocational proficiency toward an additional vocational goal or new job title must be authorized for operation of that training in the state.

Authority: T.C.A. §§ 49-7-2003, 49-7-2005, and 49-7-2008.

#### 1540-01-02-.09 BONDS.

- (1) Institutions must, on forms provided by the Commission, secure for student indemnification purposes, from a surety company qualified and authorized to do business in Tennessee, a continuous surety bond in the amount of:
  - (a) ten thousand dollars (\$10,000) for in-state institutions, out-of-state public institutions and all institutions providing primarily religious instruction, and
  - (b) twenty thousand dollars (\$20,000) for all other institutions, including out-of-state private institutions.
- (2) Out-of-state institutions must, on forms provided by the Commission, secure a surety bond for agents in the amount of five thousand dollars (\$5,000) per agent from a surety company qualified and authorized to do business in Tennessee with the institution as principal.
- (3) Institutions must provide a bond for each authorized location.
- (4) Subject to Commission Staff approval, an irrevocable letter of credit secured by a certificate of deposit or a cash deposit with a bank may be accepted in lieu of the bond. Such deposits are subject to the same terms and conditions provided for in the surety bond form.

Authority: T.C.A. §§ 49-7-2005 and 49-7-2013.

#### 1540-01-02-.10 AUDITS

- (1) Commission Staff may conduct audits to ensure compliance with the Act and these rules. Audits may be performed at the institution's authorized location or by requesting that the institution forward copies of student records to Commission Staff. In the case of the latter, the provided records will be retained by Commission Staff as working papers but will be destroyed when the audit is closed.

- (2) Commission Staff may audit an authorized institution at any time without notice to the institution. However, unless the circumstances mandate that no notice can or should be given, Commission Staff should provide at least seventy-two (72) hours' notice. Notice shall be given by email to the institutional director.
- (3) Failure to comply with any audit request may be an audit finding and result in adverse action against the institution.
- (4) Commission Staff will provide the institution with an audit report that lists any findings and the frequency. The report shall require the institution to propose corrective action for all findings or to show cause why the Executive Director or Commission should not take adverse action.
- (5) Tuition increases that in the opinion of the Commission are excessive, unreasonable or exceed initial disclosure to students may result in an in-depth audit of the institution's financial stability.

Authority: T.C.A. §§ 49-7-2005, 49-7-2006, and 49-7-2014.

1540-01-02-.11 INSTITUTION CATALOG.

- (1) Each institution must publish a catalog that includes at a minimum:
  - (a) the name and address of the institution;
  - (b) identifying data, such as catalog number and publication date;
  - (c) table of contents;
  - (d) names of owners and officers, including any governing boards, and faculty with credentials for position;
  - (e) the institutional calendar, including holidays, enrollment periods and the beginning and ending dates of terms, courses, or programs;
  - (f) the institutional enrollment procedures and entrance requirements, including late enrollment, if permitted;
  - (g) the institutional attendance policy, including minimum attendance requirements, how attendance will be determined, the circumstances under which a student will be interrupted for unsatisfactory attendance, and the conditions under which a student may be readmitted;
  - (h) the institutional policy covering satisfactory progress, including an explanation of any grading system used, a description of any probation policy, and a description of the institutional system for making progress reports to students;
  - (i) the institutional policy regarding student conduct, including causes for dismissal and conditions for readmission;
  - (j) a description of each program offered including objectives, costs, length, program components or course requirements, or in the case of correspondence instruction, the number of lessons;
  - (k) a description of the placement assistance available and, if none, so state;
  - (l) a description of the facilities and equipment used for educational programs;
  - (m) the policy concerning credit granted for previous education, training, and experience and, if none, so state;

- (n) the refund and cancellation policy, including the procedure for determining the official date of termination, the time within which a refund will be provided, and how a refund must be requested;
  - (o) a statement provided within the first four pages of the catalog which reads as follows: "The (name of institution) is authorized by the Tennessee Higher Education Commission. This authorization must be renewed each year and is based on an evaluation of minimum standards concerning quality of education, ethical business practices, and fiscal responsibility";
  - (p) a description of the student grievance procedure, including
    1. the title, address, and telephone number of the institutional employee designated to receive student complaints;
    2. if applicable, the process for escalating or appealing a complaint;
    3. if the institution allows for nonbinding mediation or voluntary arbitration, the catalog must describe the process in its entirety; and
    4. the address and telephone number of Commission Staff along with a statement that reads: "Any person claiming damage or loss as a result of any act or practice by this institution that may be a violation of the Title 49, Chapter 7, Part 20 or Rule Chapter 1520-01-02 may file a complaint with the Tennessee Higher Education Commission, Division of Postsecondary State Authorization."
  - (q) a disclosure regarding the ability to transfer credit earned to another institution, with language sufficient to describe limitations on the transfer of credit. Institutions have a responsibility to advise potential enrollees that transfer of credit is controlled by the receiving institution and that accreditation does not guarantee transferability. Suggested language is as follows:
 

"(name of institution) is a special purpose institution. That purpose is (institution's mission statement). This purpose does not include preparing students for further college study. Students should be aware that transfer of credit is always the responsibility of the receiving institution. Whether or not credits transfer is solely up to the receiving institution. Any student interested in transferring credit hours should check with the receiving institution directly to determine to what extent, if any, credit hours can be transferred.";
  - (r) the cash discount policy, if offered to students; and
  - (s) the ATB testing policies, if any, along with the admissions policies.
- (2) Institutions may provide electronic catalogs to students as long as the institution provides the student a hard-copy upon the student's request.
  - (3) Use of supplemental pages must be done in a way as to ascertain that supplemental pages become an effective part of the catalog and must show an effective date and be presented to students prior to enrollment or payment of fees;
  - (4) Catalogs should be written at a level that allows prospective enrollees to comprehend the information and make informed decisions.

Authority: T.C.A. §§ 49-7-2002, 49-7-2005, 49-7-2006 and 49-7-2008.

#### 1540-01-02-.12 ADMISSIONS STANDARDS.

- (1) The admissions policy for students must be based on the institution's objectives and must be publicly stated and administered as written.

- (2) An institution should not enroll a student in a program leading to licensure when the institution knows or, by the exercise of reasonable care, should know the student is or will be ineligible to obtain licensure in the occupation for which the student is being trained. For example, an institution should not admit a student if the institution knows the student has a prior legal conviction that will prevent the student from obtaining licensure. If a student who is ineligible or likely to be ineligible for licensure desires to enroll in such a program, regardless of license eligibility, the institution may admit the student after the student submits a signed, written statement acknowledging the student is or is likely to be ineligible for licensure. The institution shall provide the student a copy of the statement and maintain the original in the student's file.
- (3) Basis of admission shall be at a minimum:
- (a) Students enrolling in a certificate or diploma program must possess a high school diploma, a high school diploma equivalency, postsecondary credit in a degree program, or, subject to subparagraph (3)(d) of this rule, a passing score on an ATB test.
  - (b) Students enrolling in an associate or bachelor degree program must possess, at a minimum, a high school diploma, a high school diploma equivalency, or postsecondary credit in a degree program.
  - (c) Students enrolling in a post-baccalaureate program must possess, at a minimum, a baccalaureate degree from an institution judged to be appropriate by the Commission.
  - (d) A student may be admitted as an ATB student if the student has terminated secondary enrollment and is beyond the age of compulsory attendance. An institution may use either a standardized test formerly or currently recognized by the U.S. Department of Education or, if such a test is not applicable to the particular subject matter of the program, a test developed by the institution. In either case, the institution shall request approval from Commission Staff before using the test and shall state the minimally acceptable scores. The following applies to all ability-to-benefit tests:
    - 1. Tests shall be administered in a secure environment, for example, monitors present.
    - 2. Tests shall not be administered in a manner that is inconsistent with the recommendations of the standardized test developers.
    - 3. An agent is not allowed to administer the test, nor is anyone allowed to assist the applicant in answering the questions.
- (4) Proof of the basis of admission shall be maintained in the student file in accordance with Rule .15 of these rules.

Authority: T.C.A. § 49-7-2008.

#### 1540-01-02-.13 ENROLLMENT CHECKLISTS, AGREEMENTS, AND DISCLOSURES.

- (1) Pre-Enrollment Checklist: Prior to signing an enrollment agreement, institutions shall require an institution representative and the prospective student to sign and date a pre-enrollment checklist. The document must clearly indicate that it is the pre-enrollment checklist, and, if multiple pages, the pages of the pre-enrollment checklist shall be paginated using the format “\_\_ of \_\_ pages.” The checklist shall include, at a minimum affirmations that the student:
- (a) toured the institution (not applicable to institutions that deliver all instruction through distance learning);
  - (b) received an institution catalog and if provided electronically understands that the student may request a hard-copy of the catalog at any time;
  - (c) was given the time and opportunity to review the institutional policies in the catalog;

- (d) knows the length of the program for full-time and part-time students in academic terms and actual calendar time;
  - (e) has been informed of the total tuition and other fees of the program;
  - (f) has been informed of the estimated cost of books and any required equipment purchases such as a computer, specialized tools, or art supplies;
  - (g) has been given a copy of the institution refund policy;
  - (h) has executed a Transfer of Credit Disclosure Statement in compliance with T.C.A. § 49-7-144 and understands the specific limitations should the institution have articulation agreements;
  - (i) has been given the address and telephone number of Commission Staff along with a statement that reads: "Any person claiming damage or loss as a result of any act or practice by this institution that is a violation of the Title 49, Chapter 7, Part 20 or Rule Chapter 1520-01-02 may file a complaint with the Tennessee Higher Education Commission, Division of Postsecondary State Authorization."; and
  - (j) has received the most recent withdrawal, completion, and placement data as calculated by the Commission by including in the checklist:
    1. the following statement: "For the program entitled, (program name), I have been informed that, for the July (year)/June (year) period, the withdrawal rate is (percent)%, the completion rate is (percent)%, and the in-field placement rate is (percent)%. Detailed statistical data for this program may be viewed by going to <http://state.tn.us/thec/> and clicking on the Authorized Institution Data button.";
    2. a chart listing all approved program names and the related percentage rates for withdrawal, completion, and in-field placement, identifying the July/June reporting period, and stating that "detailed statistical data for all approved programs may be viewed by going to <http://state.tn.us/thec/> and clicking on the Authorized Institution Data button"; or
    3. a copy of the institution's most recent Annual Performance Report created by Commission Staff and posted on the Commission's website.
  - (k) has received and understands the institution's cash discount policy (applicable only to those institutions that have a cash discount policy).
- (2) Enrollment Agreement: Institutions enrolling an individual in a course or program shall require an institution representative and the prospective student to sign and date an enrollment agreement prior to the student attending one (1) session of class, turning in one (1) assignment, or receiving one (1) distance learning lesson, whichever occurs first. The document must clearly indicate that it is the enrollment agreement, and, if multiple pages, the pages of the enrollment agreement shall be paginated using the format "\_\_ of \_\_ pages."
- (a) The enrollment agreement shall include, at a minimum:
    1. the full and correct name and address of the authorized location of the institution;
    2. the name, address, and social security number or unique student identification number of the student;
    3. the date training is to begin and program length;
    4. if students have the option to attend part-time, full-time or part-time status of the student;

5. the projected date of completion;
  6. the program name as approved by the Commission;
  7. the total cost of the program, including itemized costs for tuition and the approximate costs for other fees;
  8. cancellation and refund policy;
  9. verification that by signing the agreement the student understands the student's right to receive an exact signed copy of the agreement,
  10. verification that by signing the agreement the institution understands its obligation to immediately provide the student an exact signed copy of the agreement;
  11. a guarantee of tuition cost for twelve hundred (1200) contact hours or twelve (12) months from the time of enrollment; programs less than twelve hundred (1200) contact hours must have a set total tuition; and
  12. The following statement: "The (name of institution) is authorized by the Tennessee Higher Education Commission. This authorization must be renewed each year and is based on an evaluation of minimum standards concerning quality of education, ethical business practices, and fiscal responsibility."
- (b) Institutions that enroll students in individual courses may modify the pre-enrollment checklist or enrollment agreement as appropriate, but should strive to make as few modifications as necessary.
- (3) Transfer of Credit Disclosure Statement: Prior to signing an enrollment agreement and the pre-enrollment checklist, institutions shall require the student to complete a Transferability of Credit Disclosure Statement.
- (a) The written statement must be:
1. a stand-alone document containing no other disclosures;
  2. contain a space for the prospective student to initial and date; and
  3. printed in type not less than sixteen (16) point font; and
  4. contain the exact language in T.C.A. § 49-7-144(b)(2), exempt that institutions offering contact hours only may substitute the word contact for credit.
- (b) Institutions shall post the disclosure on its website, but the language does not have to be in at least sixteen (16) point font.

Authority: T.C.A. §§ 49-7-2005, 49-7-2006, 49-7-2008, 49-7-2019 and 49-7-144.

1540-01-02-.14 FINANCIAL STANDARDS.

- (1) The Commission and its staff may share information with the Tennessee Student Assistance Corporation and other state and federal agencies as appropriate.
- (3) The institution shall maintain financial and business practices in-line with common business procedures utilizing standard accounting practices.
- (4) The institution shall maintain and be prepared to demonstrate at any time financial resources adequate to fund and maintain the following:
  - (a) facility maintenance and overhead;

- (b) staff and faculty payroll;
  - (c) books, supplies or equipment utilized by students; and
  - (d) general operating costs.
- (5) As part of reauthorization, authorized institutions must file financial statements for the most recently completed fiscal year as follows:
- (a) Institutions with annual gross tuition revenue at the authorized location of one million dollars (\$1,000,000) or more shall submit audited financial statements prepared in accordance with the Generally Accepted Accounting Principles by an independent certified public accountant.
  - (b) Institutions with annual gross tuition revenue at the authorized location of less than one million dollars (\$1,000,000) but more than one hundred thousand dollars (\$100,000) shall submit a reviewed balance sheet and income statement prepared in accordance with the Generally Accepted Accounting Principles by an independent certified public accountant.
  - (c) Institutions with annual gross tuition revenue at the authorized location of one hundred thousand dollars (\$100,000) or less shall submit a balance sheet and income statement using forms prepared by Commission Staff as long as those forms are completed by an independent certified public accountant or a bookkeeper certified by the National Association of Certified Public Bookkeepers.
  - (d) As an alternative to subparagraphs (5)(a) through (c) of this rule, institutions owned by the same parent company may submit an audited consolidated corporate financial statement. The audited consolidated statement shall be prepared in accordance with the Generally Accepted Accounting Principles by an independent certified public accountant. Commission Staff, the Committee, or the Commission may request additional campus or institution-specific information where needed to better understand the financial stability of a single authorized location or to protect the public interest.
- (6) The following is applicable to all financial statements:
- (a) The balance sheet must reflect the owner's (proprietorship, partnership, corporation, or other) assets and liabilities.
  - (b) The institution shall report total revenue on the income statement; however, total tuition revenue must be delineated.
  - (c) Related parties must be disclosed, including, but not limited to, related party footnotes, debt agreements with owners, and supplemental footnotes on separate campuses or branches are expected.
  - (d) It should be noted whether or not tuition revenue is recognized up front or on a pro rata basis.
  - (e) Within three (3) years from initially receiving authorization, neither the ratio of total revenues to total expenditures nor the ratio of current assets to current liabilities of either the authorized location or the parent company, where applicable, shall be less than 1:1 without convincing explanation.
  - (f) An Institution shall elect during reauthorization whether it will rely on the financial statements of the authorized location or the parent company and must use the financial statements of the elected entity for at least three (3) consecutive years.
- (7) When there are questions about the institution's financial stability, the Commission may require the institution to file appropriate financial statements, which may include audited statements prepared in accordance with the Generally Accepted Accounting Principles by an independent

certified public accountant, for the authorized location or the parent company.

- (8) All institutions must maintain a business account with a financial institution that is federally insured in said institution's name.

Authority: T.C.A. §§ 49-7-2005, 49-7-2006 and 49-7-2015.

1540-01-02-.15 INSTITUTION AND STUDENT RECORDS.

- (1) Institutional directors must maintain on-site a current copy file of materials filed with the Commission as part of their current authorization which includes the application, documentation of appropriate bonding, financial reports, and agent permit documentation.
- (2) Institutions shall retain for three (3) years a record of student complaints that follow the institution grievance process, including a copy of the complaint, any investigatory documents, and a statement of the matter's disposition.
- (3) Student financial records must be maintained and open for inspection and copying by Commission Staff in accordance with applicable confidentiality laws.
- (4) For each student, the institution must maintain an up-to-date reconciled account statement as a separate document. The statement must:
  - (a) clearly reflect the balance due the institution or student;
  - (b) all charges and payments;
  - (c) the reason for the debit or credit, for example, student cash payment, loan payment, tuition waiver, technology fee, or tuition charged; and
  - (d) all tuition charges must clearly indicate the period of enrollment for which the student is being charged, for example, if the program is a four (4) month program but the tuition charged is for one (1) month, the account statement might read "Tuition Charged for Month 1."
- (5) Institutions must maintain a file for each student enrolled in a program or course for three (3) years after the student's withdrawal from or completion of the program or course of enrollment. The file shall contain at a minimum:
  - (a) the executed transferability of credit disclosure statement required by T.C.A. § 49-7-144 and Rule .13(3) of these rules;
  - (b) documentation evidencing the student's basis for admission as provided for in paragraph (6) of this rule;
  - (c) the executed pre-enrollment checklist;
  - (d) the executed enrollment agreement;
  - (e) an exhibit of the institution's enforcement of standards acceptable to the Commission related to attendance, academic satisfactory progress, and proper documentation of any leave of absence (LOA) that may affect progress; and
  - (f) written records of the previous training and education of the applicant student which clearly indicates the appropriate credit which has been given by the institution for previous training and education.
- (6) Sufficient basis of admission documentation for purposes of the student file is as follows:
  - (a) If the basis of admission is successful completion of an ATB test, then the student file shall contain a copy of the scored test or a graded score sheet.

- (b) If the basis of admission is a high school diploma or equivalency, then the student file shall contain:
    - 1. an official transcript from the high school or other government body, such as a county school board;
    - 2. an official high school equivalency transcript or GED score sheet from the appropriate issuing entity; or
    - 3. an official military document indicating that the student completed high school such as an Enlisted Record Brief.
  - (c) If the basis of admission is postsecondary credit in a degree program, then the student file shall contain an official transcript from a postsecondary educational institution indicating that credit in a degree program was awarded to the student.
  - (d) If the basis of admission is a bachelor's degree or higher credential, the student file shall contain an official copy of the transcript from the postsecondary educational institution indicating that the student received the credential.
  - (e) If a transcript is from an institution outside the United States, documentation from a transcript translation service indicating that the education obtained is the equivalent of the applicable United States credential and, if necessary, a translated transcript.
- (7) Official documentation is a statement of the student's academic record received directly from the issuing institution or agency such as a transcript or score sheet. Paper transcripts printed on security sensitive paper that contains the issuing institution's seal or signature of an official from the institution is acceptable admission documentation. Electronic transcripts or scores sheets not printed on security sensitive paper must include indicia that the transcript or score sheet was received directly from the issuing institution or agency such as accompanying email correspondence or the envelope.
- (8) Institutions shall maintain for the life of the institution a transcript or a certificate for each student previously or currently enrolled in a program offered by the institution. Institutions may only use certificates with well-defined short term programs, such as bartending and truck driving, where there is no separation of courses by subject content. Institutions offering programs where a subject matter expert agency requires that the institution maintain a transcript must do so.
- (a) Transcripts shall be in a form that permits easy and accurate review by the student, transfer institutions, potential employers, and other state or federal agencies. The transcript shall include at a minimum the:
    - 1. complete name and address of the authorized location of the institution;
    - 2. full name of student;
    - 3. last four digits of the student's social security number;
    - 4. program name as approved by the Commission;
    - 5. status of student, for example, active, withdrawn, probation, leave of absence, or graduate;
    - 6. official date recorded for all student withdrawals and graduations;
    - 7. beginning date or academic term with the year for each course attempted;
    - 8. as applicable to the type of institution, credit or contact hours attempted and earned;

9. name of each course and, if any, the course number as listed in the institution catalog along with the corresponding grade received;
  10. indication of credits given by transfer from another institution or credit by exam;
  11. cumulative Grade Point Average (GPA);
  12. date the transcript was last updated and/or printed; and
  13. signature of an institution official.
- (b) Certificates shall be in a form that permits easy and accurate review by the student, transfer institutions, potential employers, and other state or federal agencies. The certificate shall include at a minimum the:
1. complete name and address of the institution;
  2. full name of student;
  3. program or department of enrollment;
  4. a certificate award date; and
  5. the signature of an institution official.
- (9) In lieu of hard copies of transcripts and certificates, an institution may maintain transcripts and certificates by electronic storage provided that the institution has a process for maintaining an up-to-date backup of the information in a separate system or at a different location. Commission Staff must have complete and easy access to review student transcripts and certificates during site visits and audits such that the institution can print any requested records upon request.

Authority: T.C.A. §§ 49-7-2006, 49-7-2016.

#### 1540-01-02-.16 PERSONNEL AND INSTRUCTOR QUALIFICATIONS.

- (1) Administrative personnel and instructors shall meet all qualifications listed in this rule. Evidence of education, experience, or training, such as official transcripts, for each personnel must be maintained on-site at the authorized location. Institutions must submit a copy of this evidence at any time upon receiving a request from Commission Staff.
- (2) The method of administration and procedure for staff selection must be defined in a way that each employee has specific duties and responsibilities.
- (3) Administrative personnel at an authorized institution must be graduates of an accredited college or university or have sufficient background and training in the administrator's area of responsibility. If the institution employs a director of education, that director shall possess a post-baccalaureate degree or the highest educational credential offered by the institution, whichever is higher.
- (4) Institutional Directors:
  - (a) Each institution must designate one person as the institutional director. The institutional director is responsible for ensuring that the conduct of the institution and its agents is in compliance with the Act and these rules. The institutional director shall serve as the official contact for all correspondence and business conducted between the institution and the Commission, the Committee, or Commission Staff.
  - (b) Institutional owners or the controlling board must ensure that each authorized location has an institutional director at the authorized location for at least fifty percent (50%) of the operational time each week the school has students present unless other provisions have been approved by Commission Staff.

- (c) The institutional director implicitly accepts knowledge of and responsibility for compliance with the Act and these rules including, but not limited to, advertising, records, contracts, required benchmarks, annual due dates, and fee payments.
  - (d) The institutional director at an authorized institution must:
    - 1. be a graduate of an accredited college or university with at least one (1) year experience in administration or institutional management; or
    - 2. their total years of administration or institutional management experience in postsecondary education shall equal at least five (5) years.
- (5) Instructors:
- (a) Instructional staff for all institutions must be selected at a minimum on the basis of these rules.
  - (b) Instructors in a trade related or specific skill area must have documented proficiency and practical applied experience in that trade or skill.
  - (c) An instructor must hold the appropriate license if the subject is a vocation requiring licensure.
  - (d) An instructor must be qualified by education and experience/background and must meet at a minimum the following qualifications:
    - 1. Doctorate level courses:
      - (i) Hold a doctorate degree from a college or university judged to be appropriate by the Commission and either:
        - (I) a doctorate degree with a major or concentration in the subject area to be taught; or
        - (II) a doctorate not in the subject area but with a minimum of one (1) year of practical experience within the last five (5) years in the subject area to be taught and completion of nine (9) semester hours or twelve (12) quarter hours of doctoral level courses in the subject.
    - 2. Masters level courses:
      - (i) Hold a masters or higher degree from a college or university judged to be appropriate by the Commission and either:
        - (I) a masters or higher degree with a major or concentration in the subject area to be taught; or
        - (II) a masters or higher degree not in the subject area but with a minimum of one (1) year of demonstrated practical experience within the last five (5) years in the subject area to be taught and completion of nine (9) semester hours or twelve (12) quarter hours in graduate level courses in the subject.
    - 3. Baccalaureate level courses:
      - (i) Hold a baccalaureate or higher degree from a college or university judged to be appropriate by the Commission and either:
        - (I) a baccalaureate or higher degree with a major or concentration

in the subject area to be taught; or

- (II) a baccalaureate or higher degree not in the subject area but with a minimum of one (1) year of demonstrated practical experience within the last five (5) years in the subject area to be taught and completion of nine (9) semester hours or twelve (12) quarter hours in the subject. Additional years of documented experience in the subject area may be substituted for semester/quarter hour requirements.

4. Associate level courses:

- (i) Meet the minimum requirements for doctorate, masters or baccalaureate level; or
- (ii) Hold an associate degree from a postsecondary institution judged to be appropriate by the Commission and either:
  - (I) an associate degree with a concentration in the subject to be taught and one (1) year of practical experience; or
  - (II) an associate degree not in the subject area but with a minimum of two (2) years of practical experience within the last five (5) years in the subject area to be taught and satisfactory completion in a postsecondary educational institution of nine (9) semester hours or twelve (12) quarter credit hours in the subject area to be taught. Additional years of documented experience in the subject area may be substituted for semester/quarter hour requirements.

5. Diploma and certificate level courses or programs:

- (i) Meet the minimum requirements for doctorate, masters or baccalaureate or associate level; or
- (ii) Hold a high school diploma or GED and a certificate of completion from a postsecondary institution judged to be appropriate by the Commission in a relevant subject area and a minimum of three (3) years of practical experience within the last seven (7) years in the subject area to be taught. Additional years of documented experience in the subject area may be substituted for the postsecondary educational requirements.

6. General education courses: All general education courses must be taught by holders of baccalaureate degrees with at least twenty-five percent (25%) of the general education staff with earned master's degrees or equivalent.

- (6) The Executive Director may approve a variance from the specific qualifications in paragraph (5) of this rule with sufficient justification and an assurance that the program quality will not be lessened. In such a situation, the institutional director must submit written justification and documentation with the School Personnel Application submission. In addition the instructor must be institutionally evaluated at the close of the first instructional period for effectiveness and quality. This evaluation shall be made available to Commission Staff upon request.
- (7) Instructors shall be evaluated at least annually by students, as well as the director or chief academic/instructional officer, and the institution shall have on file at the campus evidence of such evaluations.
- (8) Agents:
  - (a) An institution is responsible for any representations or misrepresentations, expressed or implied, made by the agent.

- (b) Any student solicited or enrolled by a non-permitted agent is entitled to a refund of all moneys paid and a release of all obligations by the institution. Any contract signed by a prospective student as a result of solicitation or enrollment by a non-licensed agent shall be null and void and unenforceable at the option of the student. In cases where the institution is willing to honor the contract and the student wishes the contract enforced, it can be. However, in cases where the contract has been fully executed between the institution and the student, the student would not be entitled to a refund solely because he or she was solicited by a non-permitted agent.
- (c) An agent is prohibited from inappropriate activities in procuring enrollees including, but not limited to, the following:
  - 1. administering the admission test;
  - 2. advising students about financial aid other than informing the student of the general availability of financial assistance;
  - 3. giving false, misleading, or deceptive information about any aspect of the institution's operation, job placement, or salary potential;
  - 4. representing that a program has sponsorship, approval, characteristics, uses, benefits, or qualities which it does not have; or
  - 5. soliciting enrollments in a program which has not been approved by the Commission.
- (d) An agent must display the current permit to all prospective students and other interested parties.

Authority: T.C.A. §§ 49-7-2002, 49-7-2005, 49-7-2006, 49-7-2009 and 49-7-2011.

#### 1540-01-02-.17 CANCELLATION AND REFUND POLICY.

- (1) All authorized institutions must comply with the laws of the local, state, and federal government concerning cancellations and refunds and must revise all policies and practices if laws are revised.
- (2) Each authorized institution shall have a fair and equitable refund policy which governs the repayment of institution charges assessed a student when:
  - (a) the student does not begin classes for the period of enrollment for which he or she was charged; or
  - (b) the student withdraws, drops out, is expelled from the institution, or otherwise fails to complete the period of enrollment for which he or she was charged.
- (3) An authorized institution may use the following refund policies:
  - (a) the default refund policy contained in paragraph (4) of this rule;
  - (b) an institution policy, as long as the refund due a student pursuant to that policy is equal to or greater than the refund due according to the default refund policy; or
  - (c) a refund policy mandated as a condition for students of the intuition to participate in a governmental student assistance program, such as Veterans Benefits.
- (4) The default refund policy is as follows:
  - (a) If a student withdraws from the institution on or before the first day of classes, or fails to

- begin classes, the refund shall equal the sum of all refundable fees paid and, if the student has institutional loans, forgiveness of the amounts owed by the student for the period of enrollment for which the student was charged, less an administrative fee of one hundred dollars (\$100.00);
- (b) A student who withdraws at any time is entitled to a full refund of any fee, regardless of whether the fee is included in tuition, paid to the institution for tangible goods or services not delivered to or fully provided to the student;
  - (c) In addition to subparagraph (4)(b) of this rule, if after classes have commenced and before expiration of ten percent (10%) of the period of enrollment for which the student was charged, a student withdraws, drops out, is expelled, or otherwise fails to attend classes, the refund shall equal seventy-five percent (75%) of all refundable fees paid and, if the student has institutional loans, forgiveness of the loan amount in excess of the twenty-five percent (25%) the student owes the institution, less administrative fee of one hundred dollars (\$100.00);
  - (d) In addition to subparagraph (4)(b) of this rule, if after expiration of the of ten percent (10%) of the period of enrollment for which the student was charged, and before expiration of twenty-five percent (25%) of the period, a student withdraws, drops out, is expelled, or otherwise fails to attend classes, the refund shall equal twenty-five percent (25%) of all refundable fees paid and, if the student has institutional loans, forgiveness of the loan amount in excess of the twenty-five percent (75%) the student owes the institution, less administrative fee of one hundred dollars (\$100.00); or
  - (e) In addition to subparagraph (4)(b) of this rule, if after expiration of twenty-five percent (25%) of the period of enrollment for which the student was charged, a student withdraws, drops out, is expelled, or otherwise fails to attend classes, the student may be deemed obligated for one hundred percent (100%) of the tuition and other fees charged by the institution.
  - (f) For a student who cannot complete one or more classes because the institution discontinued such a class during a period of enrollment for which the student was charged, the institution shall refund the sum of all refundable fees paid and, if the student has institutional loans, forgive the amounts owed by the student.
- (5) When computing refunds pursuant to the default refund policy, the last day of attendance for a student shall be one of the following:
- (a) the date on the expulsion notice if a student is expelled from the institution;
  - (b) the date the institution receives a written notice of withdrawal from a student;
  - (c) when no written notice of withdrawal is given, the institution shall use the last day of attendance as the date of withdrawal; or
  - (d) the date the student fails to return from an approved leave of absence.
- (6) Pursuant to Rule .15(4) of these rules, the reconciled account statement must indicate the period of enrollment for which the student is being charged for each tuition charge. If the institution does not maintain the requisite account statement or the reconciled account statement does not clearly indicate the period of enrollment for which the student is being charged, the institution shall be liable for all refundable fees paid by or on behalf of the student.

Authority: T.C.A. §§ 49-7-2006, 49-7-2007, 49-7-2008, and 49-7-2013.

#### 1540-01-02-.18 STATISTICAL DATA COLLECTIONS.

- (1) All authorized institutions shall provide student-level statistical data on a Commission Staff data form that will allow Commission Staff to calculate the following statistical information by institution and program:

- (a) the enrollment count;
  - (b) demographic statistics;
  - (c) withdrawal rates;
  - (d) completion rates;
  - (e) number of credentials awarded;
  - (f) categories of credentials awarded;
  - (g) placement rates;
  - (h) in-field placement rates; and
  - (i) average time to completion.
- (2) THEC shall publish the results of its calculations on its website except that withdrawal, completion, placement, and in-field placement rates shall not be reported for programs with ten (10) or fewer students.
- (3) Data shall include all students enrolled at the institution between the twelve (12) months beginning July 1 and ending June 30 of the year prior to the report.
- (4) Data form:
- (a) Commission Staff will provide institutions either a blank data form or a spreadsheet that is prepopulated with continuing student data.
  - (b) At a minimum, the data form shall include:
    1. student's first name, middle initial, and last name;
    2. student's social security number or unique student identification number;
    3. demographic information, such as race, gender, and date of birth;
    4. program name;
    5. Commission Staff assigned program code;
    6. date started;
    7. date completed or date withdrawn; and
    8. placed or placed in-field along with employer contact information.
- (5) All authorized Institutions shall maintain in the student's file evidence of placement sufficient for Commission Staff to verify placement. Depending on the field, sufficient evidence includes a written record of an employee of the institution, correspondence from the student, or evidence from a social media site or post indicating that the student is working independently.
- (6) If annual average institutional or individual program withdrawal rates exceed twenty-five percent (25%) or if annual average institutional or individual program in-field placement rates are less than seventy percent (70%), institutions shall explain the circumstances contributing to these rates, demonstrate how these rates are not an indicator of poor educational quality, and describe what actions the institution will take to lower the withdrawal rates and/or increase the in-field placement rates. Additionally, Commission Staff may compare an institution's rates to the state average for that type of institution and/or program. Institution types are unaccredited, accredited

non-degree granting, and accredited degree granting; program type is based on CIP codes and length. When an institution-level or program-level rate fails to meet the state average for two (2) consecutive years Commission Staff may recommend to the Commission that adverse action be taken against the institution.

Authority: T.C.A. §§ 49-7-2005, 49-7-2006 and 2016 Public Chapter 868.

#### 1540-01-02-.19 FAIR CONSUMER PRACTICES AND COMPLAINTS.

- (1) All institutions and their representatives shall act in accordance with fair consumer practices to ensure current and prospective students that nothing is hidden and verbal and written representations by the institution are accurate, such that students can make informed decisions concerning their investment of time or money.
- (2) Fair consumer practices means honesty, fairness, and disclosure to students in areas including, but not limited to, recruitment, admissions, contractual agreements, student financial assistance, obligations to repay student loans, placement assistance, job placement rates, advertising, refund policies, the meaning and recognition of different types of accreditation, the transferability of the institution's credits to other postsecondary institutions, and competitors. Fair consumer practices require an institution to apply its policies as written.
- (3) Students should have a reasonable expectation to complete programs as printed in the institutional catalog at the time of enrollment.
- (4) Institutions may not use mandatory arbitration provisions.
- (5) Findings by Commission Staff and/or ongoing complaints by current or prospective students that show a pattern of misinformation, misrepresentation, lack of disclosure, or discrepancies between verbal and written information, intimidation, or coercion may require corrective public announcements in addition to adverse action as set forth in Rule .22 of these rules.
- (6) An institution must report to Commission Staff in writing within thirty (30) days any unresolved written complaint filed in a Tennessee court about the institution of which the institution is knowledgeable.
- (7) Institutions may provide a discount for cash payments provided:
  - (a) the institution has a written policy in the catalog that includes the definition of cash and details the qualifications for receiving and the amount of a cash discount; and
  - (b) the student verifies receipt and understanding of the policy in the pre-enrollment checklist.
- (8) An institution may award a scholarship, tuition waiver, or other similar award provided:
  - (a) the eligibility requirements for the offering, including terms, conditions, application procedures, due dates, basis for selection, and amount to be awarded, are clearly defined in writing;
  - (b) the institution has a form and procedure to verify eligibility; and
  - (c) the amount of the award is a flat dollar amount or subject to calculation using a defined formula or scale.
- (9) The investigation and further review of written complaints will occur in accordance with the following provisions:
  - (a) Complaints shall be signed and submitted through hand delivery, mail, or electronic mail has provided for in Rule .27 of these rules.
  - (b) Commission Staff shall investigate all written complaints.

- (c) Any named institution or agent will receive a copy of the complaint and be provided an opportunity to respond to all allegations contained in the complaint.
  - (d) Any named institution or agent shall provide all information requested by Commission Staff as part of the investigation.
  - (e) As part of the investigation process, Commission Staff may work with the complainant and the named institution or agent to effectuate a settlement.
  - (f) Following completion of the investigation, Commission Staff shall provide to all parties written determinations and proposed recommendations and provide a date by which an aggrieved party may submit a request for further review by the Executive Director as provided for in Rule.02(2)(b) of these rules. Such date shall not be earlier than ten (10) business days after the date of the determinations and proposed recommendations.
  - (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. A request may be denied if it is not received in a timely manner as set forth in subparagraph (8)(f) of this rule.
- (10) Notwithstanding the provisions of paragraph (8) of this rule, Commission Staff may take appropriate action to investigate any complaint in order to protect the public interest.

Authority: T.C.A. §§ 49-7-2005, 49-7-2006, 49-7-2007, 49-7-2008 and 49-7-2011.

#### 1540-01-02-.20 REPRESENTATIONS, ADVERTISING, AND SOLICITATIONS.

- (1) Institutions may reference having authorization in advertising, promotional material, and on letterhead stationary using the following language: "(name of institution) is authorized for operation by the Tennessee Higher Education Commission." The entire statement must be used, have the same size font, and type of print.
- (2) Entities or individuals that own an authorized institution as well as a related business, for example, truck driver training and trucking company, must maintain clear separation in function and advertising of the business and the institution.
- (3) The Commission logo may not be used by an institution.
- (4) Institutions authorized by the Commission that have a website on, advertise through, or offer instruction via the internet must state on the institution's home page or Tennessee specific webpage: "[name of institution] is authorized for operation as a postsecondary educational institution by the Tennessee Higher Education Commission." The entire statement must be used, have the same size font, and type of print. The reference to the "Tennessee Higher Education Commission" must be a hyperlink to [www.tn.gov/thec](http://www.tn.gov/thec).
- (5) No statement shall be made that the institution or its courses of instruction have been accredited unless the accreditation is identified and is an accreditor recognized by the U.S. Department of Education.
- (6) No statement shall be made that the institution or its courses of instruction have been approved by a state or the federal government unless the approval can be substantiated by an appropriate certificate or letter of approval issued by the approving agency of the state or federal government.
- (7) All advertisements seeking prospective students must include and clearly indicate the full and correct name of the institution, the authorized location city, and, if out-of-state, the authorized location state.
- (8) Any promotion of the institution must primarily be based on the institution's educational programs, not student aid promotion or the number of jobs available, must not guarantee employment, and

must comply with fair consumer practices as described in Rule .19 of these rules.

- (9) Other than entry level salary data available on a Tennessee or federal government website, no dollar amount will be quoted in any advertisement as representative or indicative of the earning potential of graduates without prior approval by Commission Staff.
- (10) Institutions shall not use images of any kind in such a manner as to convey a false impression as to size, importance, or location of the institution, its equipment, or its facilities.
- (11) Institutions or representatives shall not make deceptive statements concerning other institutions when attempting to enroll students.
- (12) Other than referencing the most recent rates calculated by Commission Staff, no institution shall use job placement percentages or statistics except by written permission of Commission Staff.
- (13) If tuition loans are available at the institution, the school may advertise them only with the language "student tuition loans available" in type no larger than that used for the name of the school. This does not preclude disclosure of the institution's eligibility under the various state and federal loan programs.
- (14) Promotional materials or agent solicitation practices must not state or infer that programs are available on a free tuition basis unless the tuition and other fee amount reported to Commission Staff is zero (0).
- (15) No statement shall be made by an institution that the programs or courses are transferable to another institution without a current articulation agreement or transfer of credit agreement.
- (16) Claims must not be vague. For example, "award winning" institution should include the full name of the award in advertisement; specify year of any such attainment, and the source of the award.
- (17) No institution may publicize, promote or imply an accreditation that is not recognized by the U.S. Department of Education.
- (18) If an institution represents that it has an educational certification from any entity, other than those given by other Tennessee agencies, the institution must produce at the request of Commission staff proof of such certification.

Authority: T.C.A. §§ 49-7-2006, 49-7-2007, 49-7-2008 and 49-7-2013.

#### 1540-01-02-.21 AUTHORIZATION STATUS.

- (1) Temporary Authorization:
  - (a) Commission Staff will recommend temporary authorization to the Committee after determining that the institution has demonstrated through the Initial Authorization Application and a site visit that it is compliant with the Act and these rules.
  - (b) An institution will receive temporary authorization after favorable Commission action.
  - (c) Temporary authorization must be maintained for at least twenty-four (24) months prior to eligibility for regular authorization.
- (2) Regular Authorization:
  - (a) Commission Staff shall recommend for regular authorization any institution authorized for more than twenty-four (24) months that demonstrates all minimum standards for authorization through the Reauthorization Application.
- (3) Conditional Authorization:
  - (a) Conditional authorization is authorization to operate, but with conditions, such as

reporting requirements, performance standard requirements, securing new or additional bonds, a limited period of time to operate such as during change of ownership, or for the purpose of teaching out existing students. Institutions with conditional authorization may also be required to suspend or cease any part of institutional activity, such as enrolling students, advertising, or conducting specific classes or programs. Such suspension or cessation shall remain in effect until activities precipitating the condition are corrected and Commission Staff has completed all related reviews and investigations. Conditional authorization may be issued when deemed necessary to protect the public interest.

- (b) An institution may request conditional authorization, including, but not limited to, suspension of the operation, rather than expose the institution to adverse action, for situations such as unexpected loss of lease, extended inactivity, or reorganization.
  - (c) Nothing in this section shall be construed to absolve institutions of their educational and financial obligations to currently enrolled students.
- (4) Revocation of Authorization:
- (a) Revocation of authorization is the immediate and complete withdrawal of the institution's authorization to enroll, advertise, or operate a postsecondary educational institution in the state.
  - (b) Grounds for immediate revocation of authorization to operate shall include but not be limited to:
    - 1. loss of right to use the authorized location without immediate notification to the Commission;
    - 2. a principal party, owner, or administrator involved with the institution who has ever been associated with a postsecondary educational institution that ceased operation with resulting loss of time or money for enrollees or had institutional authorization to operate in a state revoked or had a felony conviction involving moral turpitude, fraud or a capital crime;
    - 3. a pattern of deceptive practices;
    - 4. failure to correct any situation that resulted in conditional authorization within a reasonable time period to be determined by the Executive Director;
    - 5. disregard for any specific directive issued by the Commission, the Executive Director, or Commission Staff;
    - 6. failure to pay assessed fines; and
    - 7. closing an institution without proper notification to the Commission.
  - (c) Revocation of authorization shall not relieve an institution of complete compliance with the requirements in these rules applicable to an institution closing, including, but not limited to, refunds to students, arranging instructional teachouts, and securing the disposition of student records.

Authority: T.C.A. §§ 49-7-2004, 49-7-2005, 49-7-2008 and 49-7-2010.

#### 1540-01-02-.22 CAUSES FOR ADVERSE ACTION.

- (1) The Commission or Executive Director in the interest of the public welfare, consumer protection and statutory responsibility may assess fines of five hundred dollars (\$500) per day per violation or revoke or make conditional the authorization of an institution or approval of an agent permit under the process as given in subparagraph .02(2)(e) of these rules for reasons including, but not limited to:

- (a) disregard of provisions of the Act and/or these rules;
  - (b) willful violation of any commitment made in an application for authorization or reauthorization;
  - (c) presenting to the general public or students or prospective students information that violates Fair Consumer Practices as outlined in these rules;
  - (d) advertising, recruiting, or operating a group of classes or a program that has not been approved by the Commission;
  - (e) failure to provide or maintain premises or equipment in a safe and sanitary condition as required by laws, regulations, or ordinances applicable at the authorized location of the institution;
  - (f) failure to provide and maintain adequate faculty and/or staff;
  - (g) failure to maintain financial resources adequate for the satisfactory conduct of the courses of instruction offered;
  - (h) operating a postsecondary educational institution at a location that has not been authorized by the Commission;
  - (i) failure to correct findings resulting from a site visit or audit;
  - (j) a pattern of coercion, threats, or intimidation by institutional personnel to students or other school personnel;
  - (k) failure to advise the Commission about significant factors, such as:
    1. financial difficulties affecting program quality, including, but not limited to, when applicable, receipt of Title IV funds;
    2. significant staff changes in a short period of time;
    3. change of ownership;
    4. outcomes of audits by other government agencies;
    5. any factor or clearly developing factor that could alter the basis for authorization;
    6. loss or lowering of accreditation status; and
    7. legal action against the Tennessee authorized school; and
  - (l) activities described in Rule .21 of these rules.
- (2) Repeated and/or consistent violations of the Act or these rules, particularly in the same areas such as advertising, fair consumer practices or operational standards may be grounds for conditional or revocation of authorization in addition to fines.
  - (3) Institutions that advertise in formats that will be in the public domain for long periods and where such advertising cannot be rewritten or retracted may be fined in accordance with the Act and these rules for each day, week, or month the advertisement is in active circulation.
  - (4) Commission Staff at any time may require that an institution furnish proof to the Commission of any of its advertising claims. If proof acceptable to Commission Staff cannot be furnished, Commission Staff may recommend to the Executive Director that the institution publish a retraction of such advertising claims in the same manner as the claims themselves. Continuation of such advertising shall constitute cause for further adverse action.

- (5) Any action by the Commission under this rule shall be in conformance with T.C.A. § 49-7-2010(c). All Commission actions are subject to due process provisions of the Uniform Administrative Procedures Act.

Authority: T.C.A. §§ 49-7-2005 and 49-7-2010.

1540-01-02-.23 INSTITUTIONAL CLOSURE.

- (1) When an authorized postsecondary educational institution proposes to discontinue its operation, such institution shall notify Commission Staff within seventy-two (72) hours of that decision.
- (2) Commission Staff will provide the institution a list of items that must be provided to Commission Staff to close the institution in good-standing and a due date by which to provide the items. The list may include:
  - (a) anticipated date to terminate teaching activity;
  - (b) ending date of present term;
  - (c) a listing by name of all students in all programs. Such list shall include student's social security number, unique student identification number, address, phone number, program of enrollment, and estimated completion dates;
  - (d) the status of all current refunds due or the amount of unearned tuition paid by each student and for which the school is obligated;
  - (e) a verified agreement with one or more local institutions able to provide sound education to all students in all programs;
  - (f) disposition and servicing of all student records as required by T.C.A. §49-7-2016;
  - (g) a request for conditional authorization to operate where required;
  - (h) updated statistical data;
  - (i) official transcripts and certificates; and
  - (j) demonstration that current educational obligations by the institution will be met on behalf of the presently enrolled students.
- (3) An institution that ceases operations shall maintain sufficient and qualified faculty, staff, and equipment to teach all subjects to all currently enrolled students, regardless of the size of the class, until such time as the institution closes.
- (4) Should the institution fail to make arrangements satisfactory to the Executive Director for the completion of the programs in which the currently enrolled students are enrolled and/or for the reimbursement of unearned tuition and fees, the institution shall be subject to fines.
- (5) Institutions that close without proper notification to the Commission or that fail to comply with closure obligations given in this rule may be deemed retroactively by the Executive Director to have had the institutional authorization officially revoked. Such a revocation status shall be maintained as part of the Commission closure file on that institution and any individuals directly involved, including, but not limited to, the director, owners, and/or the board chair.
- (6) Student Completion of Education ("Teachouts"):
  - (a) The Executive Director may approve other authorized or exempt institutions to teachout students who were currently enrolled in an institution which ceases operation. An approved teachout institution shall:

1. offer the course of study or similar course of study as those offered at the closed institution;
  2. be in the same geographic area as that in which the closed institution existed or provide necessary transportation expenses;
  3. provide the student the opportunity to complete the program at no cost in excess of that for which the student originally contracted at the closed institution;
  4. accept any and all credits earned at the closed institution; and
  5. not reduce total course hours required for the student to complete.
- (b) If the closed or closing institution fails to provide an acceptable plan to the executive director, Commission Staff may work toward effecting teachout arrangements or transfer agreements with other authorized institutions.
- (c) Teachout plans may involve other institutions or be carried out by the terminating institution as circumstances may dictate.

Authority: T.C.A. §§ 49-7-2002, 49-7-2005 and 49-7-2016.

1540-01-02-.24 Filing Methods and Requirements.

- (1) 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.
- (2) As to any filing requiring the payment of a fee, the fee must be submitted along with the filing or else the filing will be considered incomplete pursuant to Rule .07(1)(b).
- (3) Filings shall be received at DPSA on the due date. Items postmarked on the due date but not received at DPSA will be deemed late-filed and, if applicable, may be deferred pursuant to Rule 07(1)(a).

Authority: T.C.A. §§ 49-7-2005.

1540-01-02-25 FEES.

- (1) All fees collected pursuant to the provisions of this part shall be deposited in the state treasury as a special agency account to administer the provisions of this part.
- (2) Annual reauthorization fees shall be paid with the Reauthorization Application as follows:
  - (a) Annual Reauthorization Fee:
    1. a fee of five hundred dollars (\$500) if enrollment is zero (0) to three hundred (300) students;
    2. a fee of one thousand five hundred dollars (\$1,500) if enrollment is three hundred and one (301) to six hundred (600) students; and
    3. a fee of three thousand five hundred dollars (\$3,500) if enrollment is six hundred and one (601) or more students.
  - (b) Reauthorization Extension Fee ..... \$500
  - (c) Late Reauthorization Fee ..... \$500
- (3) The following fees apply to the filing of applications and other services:
  - (a) Initial Authorization Application ..... \$3,000

- (b) New Programs Application ..... \$500
- (c) Authority for Unaccredited Institutions to Grant Degrees..... \$1000  
(paid in addition to the New Program Application fee)
- (d) Credential Level Elevation for Authorized Institutions ..... \$2,000  
(paid in addition to the New Program Application fee)
- (e) Agent Permit Application – Initial ..... \$500
- (f) Agent Permit Application – Renewal..... \$250
- (g) Institution Name Change Application ..... \$500
- (h) Change of Location Application..... \$500
- (i) Fines (assesses at a maximum of per day, per violation) ..... \$500
- (j) Exemption Determination Application ..... \$100
- (k) Closed Institution Transcript Request ..... \$10
- (l) Convenience Charge for Electronic Payments ..... amount charged by vendor

Authority: T.C.A. §§ 49-7-2005, 49-7-2014 and 49-7-2017.

1540-01-02-.26 REFUND OF REGULATORY FEES.

- (1) At the request of an institution a refund will be made as follows:
  - (a) If an institution withdraws a pending application within three (3) working days from receipt or prior to the start of Commission Staff's review, then all fees assessed shall be refunded.
  - (b) If an institution withdraws a pending application more than three (3) working days from receipt and once Commission Staff review begins, the Commission may retain fifty percent (50%) of the assessed fees.
  - (c) Once Commission Staff's review of a pending application is complete or a site visit has been conducted, the Commission may retain one hundred percent (100%) of the assessed fees.
  - (d) Institutions that fail to complete the application process described in Rule 1540-01-02-.07(1)(b) shall forfeit all fees paid.
  - (e) Any other fee collected is nonrefundable once Commission Staff has performed the associated review or work related to that fee.

Authority: T.C.A. §§ 49-7-2005 and 49-7-2014.

Chapter 1540-01-10, Regulation of Postsecondary Education Institutions with Optional Expedited Authorization (OEA), is added as a new Rule Chapter within the Rules of the Tennessee Higher Education Commission such that the new Rule Chapter shall read:

RULES OF THE TENNESSEE HIGHER EDUCATION COMMISSION  
CHAPTER 1540-01-10  
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: 2016 Public Acts Ch. 868.

### 1540-01-10-.02 DEFINITIONS

- (1) "Accreditation" is a non-governmental, peer evaluation of educational institutions and programs by 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.
- (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 "DPSSA" 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.

Authority: 2016 Public Acts Ch. 868.

#### 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
  - (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 exam. The comprehensive list or verification shall include, at a minimum, the following information:
    - (i) program name;
    - (ii) DPSS 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 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: 2016 Public Acts Ch. 868.

#### 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: 2016 Public Acts Ch. 868.

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.
- (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: 2016 Public Acts Ch. 868.

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 of 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 rule;
  - (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
    - 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: 2016 Public Acts Ch. 868.

#### 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.
- (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 follow:
- (a) Complaints shall be signed and submitted through hand delivery, mail, or electronic mail has 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).

Authority: 2016 Public Acts Ch. 868.

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: 2016 Public Acts Ch. 868.

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: 2016 Public Acts Ch. 868.

I certify that the information included in this filing is an accurate and complete representation of the intent and scope of rulemaking proposed by the agency.

Date: August 15, 2016

Signature: *M Krause*

Name of Officer: Mike Krause

Executive Director

Title of Officer: Tennessee Higher Education Commission



Subscribed and sworn to before me on: 08-15-16

Notary Public Signature: *Corsina Dickson-Wiley*

My commission expires on: 08-23-16

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Filed with the Department of State on: 8/15/16

*Tre Hargett*

Tre Hargett  
Secretary of State

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