

**Agenda Item:** I.

**DATE:** November 15, 2007

**SUBJECT:** Rules Revision - Authorization and Regulation of Postsecondary Education Institutions and their Agents - Chapter 1540-1-2

**ACTION RECOMMENDED:** Reconsideration

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**BACKGROUND INFORMATION:** At the Fall quarterly meeting last year, the Commission approved a set of revisions to the rules concerning proprietary institutions (attached). As the rule revisions have moved forward through the established process, staff at the Attorney General's office have advised that the Commission should hear objections to the revisions posed by one of the proprietary institutions. The institution will be afforded the opportunity to give a presentation to the Commission at the upcoming meeting.

The institution has been asked to provide in writing the concerns to be addressed. The information will be forwarded to Commission members upon receipt.

The Postsecondary Rules are the set of regulations that follow from the law (TCA 49-7-2001 et seq., Part 20) to provide specific guidelines for oversight by staff and standards for institutions required to be authorized for postsecondary school operation. The purpose of the new and revised rules for chapter 1540-1-2 of the Authorization and Regulation of Postsecondary Educational Institutions is to address issues that have arisen since the revisions that were implemented in 2000.

The process for revising the rules has involved: 1) circulating the proposed changes among authorized institutions for comment; 2) a public hearing on the proposed changes, which was held on September 14, 2006 and chaired by Dr. Stephanie Bellard; and 3) consideration of the proposed changes by the Committee on Postsecondary Educational Institutions at its October 19, 2006 meeting.

It should be noted that of the 335 authorized institutions that received the proposed changes for comment, six provided a written response.

Changes in 24 existing rules are recommended by the staff and the Committee on Postsecondary Educational Institutions. Of the total, institutional comments were received on 16 of the proposed changes; eight received no comment.

The proposed changes are cited below. The first eight rule changes are those for which there were no comments. The second 16 rule changes received comments from institutions. For this second group, a rationale for each change is provided. The Committee on Postsecondary Educational Institutions has adopted the rationale for each change.

#### **PROPOSED RULE CHANGES:**

**The new and/or significant text revisions for which institutions did not comment at the Rules Hearing held on September 14, 2006 are summarized as follows:**

##### **1540-1-2-.03**

Definitions for “Accreditation” and “Articulation Agreement” have been included. Additionally, the definition for “Solicitation” has been revised.

- (c) “Accreditation” is a non-governmental, peer evaluation of educational institutions and programs. Private educational associations of regional and national scope have adopted criteria reflecting the qualities of a sound educational program 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. Secretary of Education and the U.S. Department of Education. Additionally, accreditation is voluntary and is not required by State law. In most cases, authorization for one to two years is a prerequisite for accreditation.
  
- (h) “Articulation agreement” for the purposes of the Division of Postsecondary School Authorization, refers specifically to "program articulation," i.e., the process of developing a formal, written agreement that specifically breaks down courses (or sequences of courses

within a program) from institution(s) that are comparable, and acceptable in lieu of, specific course requirements at similar institution(s). An articulation agreement is an agreement, a legal document with the appropriate signatures that specifies which courses at said institution(s) may be transferred to meet general education, major requirements, and electives at the receiving institution. These agreements, maintained by the Articulation Officers, at both institutions, facilitate the successful transfer of students between the two entities, to include, but is not limited to, associate and baccalaureate level institutions and ultimately comprehensive or research universities for masters and doctoral level programs.

- (qq) "Solicitation" means ~~inducing or attempting to induce a resident of Tennessee to sign, at any off-campus location, an enrollment agreement to attend a postsecondary educational institution.~~ contact, written or verbal, on the part of anyone representing an institution for the purpose of supplying information in an attempt to enroll Tennessee residents.

### **1540-1-2-.05**

Section (1) parts (b)(c)(d) and (e)(1)(2)&(3) have been reinstated. They were inadvertently taken out during the last Rule Revision in 2000.

- (1) In addition to institutions exempt by Tennessee Code Annotated, Chapter 49-7-2004, the following institutions are exempt from the annual reporting and the provisions of these regulations:
- (b) Short-term programs for which all promotional materials and advertisements indicate that the program purpose is exclusively for self-improvement, or instruction that is motivational or avocational in intent as determined by Commission staff.
  - (c) Programs that operate under Part 61 of the Federal Aviation Regulations and that provide only avocational training are exempt. Aviation programs that operate entirely under Part 141 of the Federal Aviation Regulations and programs that operate under Part 61 of the Federal Aviation Regulations and that provide vocational training are non-exempt. Oversight of these aviation schools will in no way conflict with oversight provided by the Federal Aviation Administration. While the FAA oversight ensures adequate curricula and safety of the student, the Commission's oversight is focused on protection of the personal and financial interests of the student.
  - (d) Institutions which offer intensive review courses designed solely to prepare students for graduate and/or professional school entrance exams.
  - (e) Bona fide religious institutions that:
    1. offer instruction or training without charge or any expense to participants and do not offer degrees of any type within the institution;
    2. do not suggest that postsecondary credit may be awarded by another party or transfer in educational credentials from another source;
    3. do not offer diplomas/certificates that in the opinion of the Commission replicate letters of designation or degrees.

### **1540-1-2-.07**

Section (12)(c) proposed revision provides that Commission staff should be notified prior to a change of ownership.

- (12) New Ownership / Change in Ownership:

- (c) Commission staff should be notified of any anticipated change of ownership prior to the change. In the event of a change of ownership, greater than 50%, a new owner or governing body must ~~notify the Commission within 10 days after the change in ownership and~~ request from the Executive Director conditional authorization to operate until temporary authorization can be acquired under the standards established standard procedure by recommendation of the Advisory Committee for Postsecondary Educational Institutions and affirmative vote of the Commission.

#### **1540-1-2-.08**

Section (3)(d)(2) general education requirements were increased for non-accredited institutions.

(3) Degree Granting Institutions:

- (d) Non accredited institutions seeking authority to grant degrees in the state must meet, in addition to the requirements in these regulations for temporary or regular authorization, the additional fee as given in these regulations and demonstrate compliance with, but not limited to the following standards:
2. 25%percent to 50 percent of the total program, depending on the degree offered, must be general education courses and should be indicated separately in the curriculum presented;

#### **1540-1-2-.14**

Section (9) has been included requiring that all authorized institutions must maintain a business account with a financial institution that is federally insured.

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

#### **1540-1-2-.17**

Section (4)(e) has been included requiring that students enrolled in a program at a non-accredited institution, that are not able to complete courses that are serial in nature, shall be refunded the amounts paid for unearned tuition.

- (4) The institution's refund policy shall be deemed by the Commission to be fair and equitable if:
- (e) For a student enrolled in a program at a non-accredited institution, which is serial in nature, in which classes are offered one at a time, that cannot complete the individual class(es) that are part of a program for which the student was charged, the institution must refund the amounts paid or to be paid by or on behalf of the student for such individual class(es); or

#### **1540-1-2-.25**

Section (3)(g) has been included requiring a fee for a change of institutional name.

- (3) The fees to be collected by the Commission hereunder shall accompany an application for authorization to operate an institution or an application for an agent's permit, or other application required by these rules in accordance with the following schedule, ~~until amended, and shall be based upon an institution's (bearing in mind whether a 1540-1-2-.05(4) exception has been granted) annual gross tuition revenue collected in Tennessee based on the institution's previous fiscal year, as follows:~~

(g) Change of Institutional Name \$300

**1540-1-2-.25**

Section (4) has been revised to allow the Commission to base renewal fees for recruitment-only institutions on their annual gross tuition revenues.

- (4) Reauthorization fees for in-state institutions are based upon an institution's annual gross tuition revenue collected from July 1<sup>st</sup> to June 30<sup>th</sup> of the previous year. Reauthorization fees for out-of-state institutions are based on an institution's annual gross tuitions collected from Tennessee students from July 1<sup>st</sup> to June 30 of the previous year. In each instance the reauthorization fee shall be assessed according to the following schedule:

**The following changes received institutional comments. The changes and/or proposed responses address the questions, comments, and suggestions that were submitted and/or made at the Rules Hearing held on September 14, 2006.**

**1540-1-2.03(1)(f) DEFINITIONS**

- (1) The following definitions are complementary to definitions in T.C.A. 49-7-2003 and have the following meanings, unless the context clearly indicates otherwise:

- (f) "Agent" means any person owning any interest in, employed by or representing for remuneration a postsecondary educational institution, who, by solicitation in any form, 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 for any such purpose.

The phrase, "outside of an institution" was inadvertently removed from the language. For clarity, the language will be revised as follows: "Agent" means any person owning any interest in, employed by or representing for remuneration a postsecondary educational institution, who, by solicitation in any form, outside of the institution, 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 for any such purpose.

**1540-1-2.03(1)(p) DEFINITIONS**

- (1) The following definitions are complementary to definitions in T.C.A. 49-7-2003 and have the following meanings, unless the context clearly indicates otherwise:

- (p) "College" means (1) a unit of a university offering specialized degrees or (2) a postsecondary institution offering courses of study leading to traditional undergraduate college degrees. Some examples of traditional degrees are, but are not limited to: 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.

The definition of college was expanded to make it clear what the original intent of the rule was. The rule was intended to prohibit authorized institutions from offering degrees that are not permissible to be granted by an institution that does not have regional accreditation.

**1540-1-2.06(14)(b) MINIMUM AUTHORIZATION STANDARDS AND REQUIREMENTS**

(14) School Name:

- (b) No postsecondary educational institution under the Act and these rules may use the word “college” in their name unless the school has been so approved by a regional accrediting body recognized by the U. S. Department of Education, or
1. For institutions authorized prior to October 1, 2006, uses an appropriate qualifier along with the word “college,” such as “career,” “vocational,” “business,” “technical,” “art” etc., or in the case of a religious institution, “Bible” or a denominational term.
  2. For institutions authorized on or after October 1, 2006, an appropriate qualifier preceding the word “college,” such as “career,” “vocational,” “business,” “technical,” “art” etc., or in the case of a religious institution, “Bible” or a denominational term.

This rule has always required institutions that have not chosen to be regionally accredited to utilize an appropriate qualifier along with the word college in their name. The revision requires that the qualifier precede the word college. This revision will only affect institutions that apply for initial authorization or a change of institutional name after the proposed revisions have been adopted. This revision was necessary due to institutions dropping the qualifier from their authorized name without Commission approval.

The Commission does not allow use of the word college simply as a protection mechanism for students. In the opinion of the Commission, when the word college is used without a qualifier, a prospective student may assume that the institution is accredited by a regional accrediting body. The regulations of other states in this matter are of no consequence to the Commission.

**1540-1-2.07(2)(a)(3) INSTITUTIONAL APPLICATIONS**

(2) Authorization - What Constitutes a Complete Application:

- (a) Prior to operation, which includes advertising, recruitment and solicitation, institutions seeking or required to hold an authorization must submit on forms provided by the Commission, a completed and typed application which includes at least the following:
3. ownership and/or controlling officers; name(s), home address(es), and phone number(s) of all owner(s), controlling officer(s), and/or members of the board of directors;

It is necessary that authorized institutions provide the names, home addresses and phone numbers of all owners, controlling officers and/or members of the board of directors so that in the event of a sudden institutional closure or other extenuating circumstance, individuals with decision making authority regarding the institution may be contacted. Personal home addresses and residential phone numbers are not provided to the general public. The information is utilized in emergency situations only.

#### **1540-1-2.07(14) INSTITUTIONAL APPLICATIONS**

14. Current verification of fire and sanitation inspections of educational facilities (and student housing owned, leased or operated by the institution) must be filed;

The fire and sanitation report that is filed by online institutions is for the building where the server is maintained and in most instances, administrative offices. It must be filed for online institutions to ensure the safety of the server, and other important student information, including transcripts.

#### **1540-1-2.08(3)(b) REGULATIONS FOR SPECIFIC SCHOOLTYPES**

- (3) Degree Granting Institutions:

(b) All degrees offered must be approved by name and designation by the Commission. No institution may offer traditional ~~liberal arts~~ degrees or professional degree designations such as those given in the definitions under “college” and “university” unless previously approved by a recognized regional accrediting body.

1. An exception may be approved by the Executive Director upon recommendation of Commission staff.

This rule was revised to make it clear that only regionally accredited institutions may offer traditional degrees. Further, the definition of traditional degrees was expanded to be inclusive of all traditional degrees, not just those degrees that have liberal arts components. The Commission believes that all traditional degrees were included in the original spirit of this rule.

#### **1540-1-2.13(9)&(10) ENROLLMENT AGREEMENTS AND STANDARDS**

- (9) Tuition increases that in the opinion of the Commission are excessive, unreasonable and exceed initial disclosure to the student may be denied and/or result in an in depth audit of the institution at the school’s expense to assure the Commission of financial stability.

- (10) All tuition changes must be submitted on forms provided by the Commission and approved by commission staff prior to their inception.

It is necessary that all tuition changes be submitted and approved by Commission staff prior to their inception to ensure that an institution’s tuition is not being raised excessively and without just cause. This is in accordance with T.C.A. 49-7-2007(e), which asserts that neither the Committee on Postsecondary Educational Institutions or the Tennessee Higher Education Commission are required to approve any program

submitted for approval if students' potential earnings after completion of the program are not reasonable to the cost of the program.

Additionally, Commission staff must keep an accurate database of all tuition for authorized institutions and all programs. This database is necessary to answer questions from authorized institutions, students, parents, the legislature, our counterparts in other states, and other constituents.

#### **1540-1-2.15(6)(e)(13)&(7) INSTITUTIONAL AND STUDENT RECORDS**

- (6) Institutions must maintain the following documentation in each enrolled student file or folder and shall include but not be limited to:
  - (e) an up-to-date educational transcript for each enrollee in a form that permits easy and accurate review by the student, transfer schools, potential employers and authorized state or federal agencies. Transcripts must indicate the name and address of the institution and be signed by an appropriate institutional officer(s), (i.e., registrar, president, dean). The transcript shall be a permanent record of the student's progress and academic performance, which shall include, but not be limited to:
    13. appropriate signature(s):
- (7) ~~In lieu of hard copy educational transcripts,~~ The institution may maintain the above information by electronic storage provided that there is at least one complete updated 'backup' copy in a separate system or location, Commission staff and other authorized groups have complete and easy access to review student transcripts during site visits and the institution can print out any or all transcripts upon request

The content of this rule has not changed. Institutions are still able to store electronic copies of their students' transcripts to be printed out upon request by the Commission. It is clear that the transcripts would not be signed until they are printed. The Commission simply requests that transcripts be accessible during site visits.

Additionally, hardcopies of transcripts are necessary in the event that an authorized institution ceases operation. The transcripts provide insight on where a student was in his or her training for the purposes of calculating unearned tuition. Additionally, we are required by law to house and disseminate student transcripts from closed institutions.

#### **1540-1-2.16(1)&(12)(a) PERSONNEL AND INSTRUCTOR QUALIFICATIONS**

- (1) Commission staff approval is necessary for all instructors and administrative personnel. All instructors and administrative personnel qualifications must be submitted, on forms provided by the commission staff, no later than 10 days after new staff have been hired.
- (12) ~~Instructors~~ Minimum Requirements for Instructors of all authorized institutions:
  - (a) ~~Instructional staff for all institutions must be selected on the basis of credentials demonstrably higher, on the basis of experience and training, than the level to be taught.~~ Instructors must provide evidence of experience and training higher than the level to be taught.

The intent of this revision was not for Commission staff to interview and/or recommend for hire on the part of authorized institutions; it just requires that hiring decisions be communicated within 10 days after the hire date. These revisions were made to make it clear that the hiring of individuals that do not meet the minimum criteria stated in the rules is unacceptable. In recent years there have been several instances where employees misrepresented themselves and had to be removed from their positions when Commission staff discovered the fraud.

Accredited institutions, unless otherwise requested by Commission staff, do not have to submit personnel forms for instructional staff; only the administrators (President, Director of Education, Registrar, Director of Financial Aid, etc.)

### **1540-1-2.16(16)(c) PERSONNEL AND INSTRUCTOR QUALIFICATIONS**

(16) Agents and Recruiters:

- (c) Agents must have separate permits to represent separate institutions. ~~unless they are commonly held.~~ Mutual agreement by institutions is required.

Agents may represent institutions with common ownership; however, because each institution is given a separate authorization to operate, all agents must have separate permits.

### **1540-1-2-.17 CANCELLATION AND REFUND POLICY**

(4) The institution's refund policy shall be deemed by the Commission to be fair and equitable if:

- (a) All or a portion of the tuition, fees, and other institutional charges assessed the student were paid or to be paid by student assistance programs sponsored by one or more governmental or private agencies or organization, including employer provided financial assistance, and the institution, as a condition of establishing eligibility for its students to participate in such programs, is required to adhere to a refund policy prescribed by the sponsor of the student assistance; or
- ~~(b) For students not affected by subparagraph (4a), the institution's refund policy produces a refund which equals or exceeds the amount which would be calculated by application of the following procedures:~~
  - (b) 1. 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 amounts paid or to be paid by or on behalf of the student for the period of enrollment, less an administrative fee of one hundred dollars (\$100.00);
  - ~~2. If after classes have commenced and before expiration of ten percent (10%) of the period of enrollment for which he or she 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 amounts paid or to be paid by or on behalf of the student for the period, less administrative fee of one hundred dollars (\$100.00);~~
  - ~~3. If after expiration of the of ten percent (10%) of the period of enrollment for which he or she 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 amounts paid or to~~

~~be paid by or on behalf of the student for the period, less administrative fee of one hundred dollars (\$100.00);~~

- ~~4. If after expiration of twenty five (25%) of the period of enrollment for which he or she was charged, a student withdraws, drops out, is expelled, or otherwise fails to attend classes, the student may be deemed obligated for one hundred (100%) of the tuition, fees and other charges assessed by the institution; or~~
- (c) For students not affected by subparagraph (4a), the institution may adopt and utilize the ~~federal statutory pro-rata~~ refund method for a student whose last day of attendance occurs prior to sixty percent (60%) of the period of enrollment, or such later point in time as the institution may select and be published in the institutional catalog. After completion of 60% of the period of enrollment the student may be deemed obligated for one hundred (100%) of the tuition, fees and other charges assessed by the institution; or

The cancellation and refund policy will not be revised; it will read as it does in the current rules.

#### **1540-1-2.19(1) FAIR CONSUMER PRACTICES AND STUDENT COMPLAINTS**

- (1) No discounting is allowed. All students must be charged the same price for all programs and classes regardless of their method of payment.

The Commission believes that students enrolled in a program should pay the same amount of tuition and fees based on the services received.

Institutions may, however, provide institutional scholarships that have identifiable criteria. These scholarships may aid students to pay for their education. Please contact postsecondary staff for more information.

#### **1540-1-2.20(6) ADVERTISING AND SOLICITATION**

- (6) All advertisements, except for radio, placed by ~~the~~ an institution or its representatives seeking prospective students must include and clearly indicate the full and correct name of the institution, its address, and the city where the institution is located; radio advertisements must include the full and correct name of the institution and the city and state where the institution is located.

Each institution is given a separate authorization to operate and therefore must advertise as such.