

**DATE:** November 16, 2016

**SUBJECT:** Rulemaking Proceeding Regarding Rule Chapter 1540-01-02, Authorization and Regulation of Postsecondary Educational Institutions and Their Agents and Proposed Rule Chapter 1540-01-10, Regulation of Postsecondary Educational Institutions with Optional Expedited Authorization (OEA)

**ACTION RECOMMENDED:** Adopt the attached Redline of Recommended Final Rule Revisions and the Responses to Comments for purposes of submitting the Rulemaking Hearing Rule(s) Filing Form to the Attorney General for review and direct the Executive Director to make any non-substantive changes to the rules required by the Attorney General before submitting the form to the Tennessee Secretary of State.

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**Materials Provided for Your Consideration:**

- Responses to Comments .....Attachment 1
- Redline of Recommended Final Rule Revisions .....Attachment 2
- Transcripts of October 6, 2016 Rulemaking Hearing .....Attachment 3
- All Timely Filed Written Comments .....Attachment 4

**Background Information:** Public Chapter 868, referred to as The Tennessee Higher Education Authorization Act of 2016 “HEAA,” passed the General Assembly earlier this year. The bill was effective for rulemaking purposes when signed on April 19, 2016; however, the substantive provisions of the bill became effective October 1<sup>st</sup> of this year. The bill includes changes that are specific to degree granting, accredited institutions and others that are applicable to all institutions. Given the expansiveness of the HEAA, on July 20, 2016, the Tennessee Higher Education Commission (Commission or THEC) voted to delete Rule Chapter 1540-01-02 in its entirety, promulgate new rules for this rule chapter, and promulgate a new rule chapter to implement OEA. The Commission did this by approving a set of rule revisions as Emergency Rules and as Rulemaking Hearing Rules to send to the Office of the Attorney General for review and to move forward with the rulemaking hearing process.

Thereafter, the rules were approved by the Attorney General and were filed with the Secretary of State on August 15, 2016, both as Emergency Rules and as a Notice of Rulemaking Hearing. The Emergency Rules were effective October 3, 2016 and will expire April 1, 2017 or upon adoption of permanent rulemaking hearing rules. The Notice of Rulemaking Hearing set October 6, 2016 as the hearing date and written comment filing due date. The purpose of the hearing and the written comment period was to provide interested parties an opportunity to comment on the rules included in the notice. Also, on September 7, 2016, THEC emailed all authorized institutions and known interested parties the Notice of Rulemaking Hearing.

THEC convened the rulemaking hearing as noticed on October 6, 2016. Six institutions or corporate parents and one law firm commented on the rules,<sup>1</sup> either orally at the hearing or through written comments. Some commenters expressed their appreciation for THEC listening to comments throughout the rulemaking process. Others asked operational questions about the rules but did not suggest revisions. Finally, commenters suggested revisions to four rules, Rule 1540-01-02-.05(1)(a), .08(2), and .12(3)(a) and Rule 1540-01-10-.06.

As a result of these comments, further review of the rules, and the initial implementation of the Emergency Rules, Commission Staff recommends some revisions to the rules that were in the Notice of Rulemaking Hearing. Generally, the revisions are typographical, grammatical, statutory citation updates, necessary for clarification, or the result of institution comments. The revisions are highlighted in yellow on the attached Redline of Recommended Final Rule Revisions. Additionally, Commission Staff created the attached Responses to Comments for your review. Responses to comments must be filed with the Tennessee Secretary of State.

On October 26, 2016, Commission Staff sent the members of the Committee on Postsecondary Educational Institutions the final rule revisions and related materials, including the proposed responses to comments. At its November 2, 2016 meeting, the Committee voted unanimously to recommend the Redline of Recommended Final Rule Revisions and the Responses to Comments to the Commission.

It is Commission Staff's recommendation that the Commission vote to:

1. Adopt the attached Redline of Recommended Final Rule Revisions and the Responses to Comments for purposes of submitting the Rulemaking Hearing Rule(s) Filing Form to the Attorney General for review and
2. Direct the Executive Director to make any non-substantive changes to the rules required by the Attorney General before submitting the Rulemaking Hearing Rules Filing Form to the Tennessee Secretary of State.

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<sup>1</sup> The commenters were: National College (6 Tennessee locations and 1 out-of-state location), DeVry University (1 Tennessee location and 1 out-of-state location); Apollo Group (4 University of Phoenix Tennessee locations and 1 The Iron Yard location); Education Corporation of America (2 Virginia College Tennessee locations and 1 Brightwood College Tennessee location); Interfaith Education Center for Community Dental Care (1 Tennessee location); Nashville Software School (1 Tennessee location); and Waller Lansden Dortch & Davis LLP.

## Responses to the Comments Offered as Part of the Rulemaking Proceeding Initiated on August 15, 2016

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**Subject of Comment:** Rule 1540-01-02-.05(1)(a) – Exemptions

**Commenting Entities:**

- Waller Lansden Dortch & Davis, LLP

**Comment Summary:** The suggestion made by this commenter is to add an explicit exemption for franchisor, franchisee, and employee training.

**Commission Staff Response:** Staff accepted this suggestion by incorporating the suggested language along with an added qualifier that the training must be at no cost to the employee. This qualifier is consistent with the other .05(1)(a) exemptions.

**Subject of Comment:** Rule 1540-01-02-.08(2) – Acceptance of funds prior to start date

**Commenting Entities:**

- Nashville Software School, Inc.

**Comment Summary:** This rule provides: “Unaccredited institutions shall not accept funds for tuition prior to ten (10) business days of the scheduled start date of the course or program.” The institution commented that the number of days should be greater as the current ten (10) day period compromises the flexibility of students who are seeking financing or trying to reserve a spot.

**Commission Staff Response:** Staff does not agree with this comment and is not recommending that the proposed rule be revised. The proposed rule is identical to a rule that was effective from 2008 through 2011. See Rule 1540-01-02-.18(6) (August 2008). The rule prevents unaccredited institutions from receiving tuition too far in advance. Preventing such protects students in the event that the institution closes unexpectedly and is unable to return tuition to students who paid in advance. Such a scenario is less likely when the time period between the first day tuition can be paid and the program starts is short. Staff will contact the institution to discuss alternatives that are consistent with the rules and the institution’s business model.

**Subject of Comment:** Rule 1540-01-02-.12(3)(a) – Basis of admission for certificate and diploma programs

**Commenting Entities:**

- Interfaith Education Center for Community Dental Care

**Comment Summary:** The institution suggests that it should be able to admit students in short certification courses based on the student having a current license in the field. The institution explained that the Board of Dentistry only requires verification of licensure to enroll in short certification courses.

## Responses to the Comments Offered as Part of the Rulemaking Proceeding Initiated on August 15, 2016

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Commission Staff Response: Staff accepted this suggestion by incorporating additional language at Rule 1540-01-02-.12(3)(a), which sets forth the basis of admission standards for certificate and diploma programs, and Rule 1540-01-02-.15(6)(c), which explains basis of admission documentation requirements.

Subject of Comment: Rule 1540-01-10-.06 – Revocation of OEA Status

Commenting Entities:

- Education Corporation of America (ECA) on behalf of Brightwood College and Virginia College (Knoxville and Chattanooga, Tennessee)
- National College – Locations in Bristol, Bartlett, Knoxville, Madison, Memphis, and Nashville, Tennessee and Salem, Virginia.

Comment Summary:

This rule does not contain a provision for the circumstance where an institutional accreditor loses its recognition by the U.S. Department of Education. Currently, if an accreditor loses its recognition, an OEA institution would lose its OEA status. At best, under the rule, an OEA institution would have 6 months to find a new accreditor; however, seeking accreditation takes 12 to 18 months.

Commission Staff Response: Staff accepted this suggestion by incorporating additional language at Rule 1540-01-10-.06(4) stating:

[N]o immediate action should be taken to revoke an institution's OEA when the institution's accreditor is removed from the U.S. Department of Education's list of recognized accreditors. The Executive Director shall set a time period in which institutions may continue to operate under OEA, assuming all other OEA requirements are met. The time period should coincide with the provisional time period set by the U.S. Department of Education for affected institutions to seek a new accreditor.

Staff believes this addition fully addresses the concerns raised by the comment and requires minimal intervention until the procedure at the U.S. Department of Education is concluded.

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

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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 and will work to implement these rules as staffing allows. 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 ~~Postsecondary Education Authorization Act~~ 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 ~~Many sections of the Act are so specific that the need for related rules is diminished or negated. Institutions or agents must comply with the current language of the Act and these rules as the total administrative reference.~~
- (3) ~~Unless otherwise noted, general statements shall be in reference to institutions, businesses, services or any entity seeking, holding or required to hold a certificate of authorization under the Act and these regulations.~~

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 ~~Tennessee Higher Education~~ Commission at each quarterly meeting shall consider recommendations from ~~the Commission staff and/or Postsecondary Education Institution Committee~~ the Committee on Postsecondary Educational Institutions regarding all and the Division of Postsecondary State Authorization regarding authorizations, program approvals, ~~awarding educational credentials (including authority to grant degrees)~~ and any other matter at the request of the Commission's Executive Director.
- ~~(a) — No institution may solicit, recruit, award credentials or operate as a postsecondary educational institution until such authorization is granted by affirmative vote of the Commission.~~
- (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, ~~based on these rules and Act, necessary to conduct this consumer protection regulatory function~~, during the periods between ~~authorization action meetings of the Commission~~ meetings, ~~subject to ratification by the Commission~~ provided that:
1. the Executive Director ~~shall give~~ gives written notice of such action to the affected party;
  2. the Executive Director ~~shall instruct~~ notifies the affected party that they may notify the Commission within ten (10) business days ~~ten (10) 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 ~~shall give~~ gives written notice of the action to members of the Commission.
- (b) Whenever ~~the Commission~~ ~~authorization~~ staff cannot resolve a complaint or a dispute involving the Act or ~~to the administration of~~ these rules, the Executive Director upon a written request from an aggrieved party ~~which~~ 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~~ the advice of Commission Staff ~~of the Committee on Postsecondary Education Institutions,~~ the Executive Director, in consultation with the Commission, ~~in consultation with the Commission,~~ is authorized to ~~recommend the waiving of deadlines or these rules~~ regulations developed pursuant to this Chapter, upon well- documented extraordinary cause, ~~where necessary to protect~~ carry out the provisions of this part in the public interest, and when re consistent with T.C.A. §§ 49-7-2001 et seq. the Act.

- (d) The Executive Director may exempt a program or activity from authorization or from compliance with a specific ~~regulation-rule~~ if such an exemption can be demonstrated to be in the public ~~good-or~~ 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. ~~A~~ assess fines under ~~this Part~~ the Act and these rules;
  2. ~~I~~ntervene to alter, place conditions on, suspend, or revoke, in full or in part, an institution's or agent's authorization to operate; ~~and~~
  3. ~~I~~ssue temporary or, conditional, ~~limited, or probationary~~ authorization.
- ~~(f) Advise the Tennessee Student Assistance Corporation to notify the appropriate lending and guarantee agencies of the institution's closure.~~
- (3) Role of the ~~Postsecondary Education Institution Committee~~ Committee on Postsecondary Educational Institutions (Committee):
- (a) The ~~Postsecondary Education Institution Committee~~ Committee shall meet quarterly ~~or y or at other times on~~ at the call of the Chairman of ~~said the~~ Committee, at the call of a majority of the Committee or pursuant to the call of the majority of Committee members, ~~or at the call of the Chairman of the Commission~~ to serve as an advisory committee to the Commission, and make recommendations on:
- (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. ~~all initial~~ applications for ~~temporary~~ authorization;
  2. ~~all applications for regular authorization;~~
  - ~~3.~~ ~~all applications for reauthorization;~~
  - ~~4.~~ ~~the awarding of educational credentials~~ applications for program approvals;
  3. proposed rules; and
  4. consideration of such other matters relating to the ~~Postsecondary Education~~ Act at the request of the ~~Commission's~~ Executive Director;
- (c) The Committee, and, as needed, other experts appointed by the Executive Director, ~~shall~~ may participate in institutional site visits for purposes of evaluating compliance with ~~legislation and rules~~ 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 ~~Part 20 of this chapter. Such delegations shall include the authority to initiate~~

~~and conduct on-site institutional reviews and investigations and the formulation of rules of procedure and performance standards for authorization and institutional performance, which actions shall be subject to review, approval and/or disapproval by the Commission.~~

- (e) The Chairman of the Committee may appoint sub-committees as needed.
- (4) Role of the Commission Staff:
- ~~(a) Designated Commission staff members shall oversee and administer for purposes of compliance TCA §§ 49-7-2001 et seq. and the related Postsecondary Regulations chapter 1540-01-02.~~
  - (ab) Beginning ~~July 1, 1997~~October 1, 2016, the office and Commission Staff responsible for oversight of ~~the Act~~TCA §§ 49-7-2001 et seq. and Rule Chapters 1540-01-02 and 1540-01-10 ~~the related Postsecondary Regulations chapter 1540-01-02~~ shall be officially referred to as the Tennessee Higher Education Commission, ~~Office of Postsecondary School Authorization (Professional, Business, Vocational and Career)~~Division of Postsecondary State Authorization (DPSA).
  - (eb) Commission Staff shall Pperform site visits and/or audits to review, inspect, and investigate locations as necessary to ensure compliance with the Act and these rules, ~~institutions seeking, holding or required to hold a certificate of authorization for verification of compliance. This includes but is not limited to~~Site visits or audits may be conducted at the discretion of Commission Staff for reasons including, but not limited to, to initial authorization determinations for new institutions, program approvals, new program reviews, authorization inspections for nonexempt Tennessee institutions, follow up to written and signed complaints, investigations, or adverse publicity compliance checks, or any situation that may adversely affect students or ~~consumers~~people at the institution.
  - (ec) Commission Staff shall Iinvestigate as necessary any activity believed to create a physical presence ~~all non-authorized postsecondary educational activities operating~~ in Tennessee to verify adherence to the Act and these rules ~~by all institutions to determine whether an exemption is appropriate~~ ~~s not exempted by the Act.~~
  - (ed) Commission Staff shall Eestablish ~~a deadline~~due dates for submission of all fees, applications, initial authorization packages, new program applications and ~~any~~ other materials to be included on the agenda for each quarterly meetings of the ~~Postsecondary~~ Committee. ~~(Institutional Applications (1540-01-02-.07))~~.
  - (fe) Commission Staff may Sshare with state or federal agencies information ~~for on~~ institutions seeking, holding, or required to ~~hold a certificate of authorization~~be authorized by the Commission as well as any and unauthorized educational operations. Commission Staff may P~~rovide state or federal agencies information pertaining to school closures under any condition.~~ Share with appropriate accrediting bodies any adverse action recommended or taken by Commission Staff, taken by 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) ~~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:~~
- (a1) “Ability-to-benefit” or “ATB” as ~~used in these regulations, in contrast to the use of that term for federal financial aid or other purposes, means~~ an adjective describes:
- (a) ~~a~~ students, regardless of financial condition, who do not possess ~~has not~~ provided proof of receiving a ~~a~~ high school diploma diploma or GED or equivalency, but who have ~~s~~ demonstrated by successfully passing an ability-to-benefit test that the student ~~can possess the cognitive or physical skills needed to benefit~~ profit materially or personally from a course or certain course of study ~~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.
- (b2) “Academic” ~~as an adjective describing a degree in description of a program or institution~~ means a degree that which ~~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.
- (e4) “Act” means the ~~Tennessee Postsecondary Education Authorization Act of 1974~~ Higher Education Authorization Act of 2016, ~~Tennessee Code Annotated~~ T.C.A. §§ 49-7-2001, et seq., as amended.
- (e5) “Adverse action” means action taken by the Executive Director or Commission to ~~penalize~~ fine, limit, change, suspend, or cause to cease activity that is ~~in non-~~ not ~~compliant~~ with the Act and these rules.- Such adverse action ~~may include but not be limited to~~ includes fines of five hundred dollars (\$500) per violation per day; suspension of activity; conditional authorization, or revocation of authorization or approval.
- (e6) “Agent” means ~~a person employed full- or part-time by the institution, whether the institution is located within or without the state of Tennessee, to act as representative, solicitor, broker, or independent contractor to directly procure or induce people to become students or enrollees for the institution at an off-campus location~~ 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, ~~or ninety~~ (90) quarter credit hours ~~of instruction~~, or the equivalent.
- (10g) “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 ~~permission or licensure to operate~~ for a specified time ~~at~~ a specified ~~place(s)~~ location. Institutions shall not use A an authorization to operate ~~institution or agent awarded a letter or certificate of authorization in Tennessee shall not use terms to interpret the letter or certificate which specify or 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."
- (11h) “Authorization site visit” means an institutional site visit conducted by ~~Commission staff~~ Commission Staff or ~~Postsecondary a~~ Committee members to verify a location or program is ~~compliance~~ with ~~Postsecondary Education Authorization~~ the Act and these rules of 1974, Tennessee Code Annotated §§ 49-7-2001, et seq. as amended and the chapter 1540-01-02 of the Postsecondary Regulations. The authorization visit is commonly called a ‘site visit’.
- (12i) “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, ~~or one hundred and eighty~~ (180) ~~180~~ quarter hours, or the equivalent.
- (13j) “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~~ contact hours normally with a single skill objective.
- ~~(k) “Certified” when used to modify audit refers to an audit in accordance with Generally Accepted Auditing Standards (GAAS) and in accordance with the auditing standards set forth in the book, "Government Auditing Standards" issued by the Comptroller of the United States (often referred to as the "yellow book" standards). If, However, the entity is required for other reasons to have conducted a certified audit in accordance with O.M.B., Circular A-133, such an audit shall be an acceptable substitute for the audit required pursuant to these regulations.~~
- (14) “Clock Hour” has the same meaning as contact hour.
- (15) “Closed enrollment” means instruction provided ~~between an educator or educational~~

~~service~~ to a group or business ~~on a private contractual bases~~ by a postsecondary educational institution, whereby public solicitation does not occur and the ~~instructional provider~~ institution is given a list of enrollees to train at no cost to the students.

- (~~m~~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. ~~traditional undergraduate college degrees. Some examples of traditional degrees are: Associate of Arts, Associate of Science, Bachelor of Arts, Bachelor of Science, and Bachelor of Fine Arts.~~
- (~~n~~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, Completion Rate = Number of Completions/(Number Not Currently Enrolled - Special Circumstance Withdrawals) x 100.
- (~~e~~20) "Contact ~~h~~Hour" ~~means a sixty (60) minute period of time that contains at least fifty (50) minutes of actual directed or supervised instructional time. (clock hour) refers to actual directed or supervised instructional time, not to be less than 50 minutes for every 60 minutes of time.~~
- (~~p~~) ~~"Credential" refers to educational credentials which include but are not limited to: certificates, diplomas, letters of designation, degrees, transcripts or any other papers generally taken to signify progress or completion of education / training at a postsecondary educational institution.~~
- (~~q~~21) "Degree" means ~~letters of designation or an educational~~ credential ~~or a title~~ from a postsecondary educational institution with level program acceptable to and so authorized by the Commission and/or an accrediting body recognized by the U.S. Department of Education. Typically used in some form is 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.
- (~~r~~23) "Diploma program" means a program of instruction offering technical and some basic course work. ~~Some g~~General education or peripheral courses may be included. ~~The p~~Program requirements shall generally range ~~ferom~~ more than five hundred (500) contact contact hours ~~but to~~ less than the contact requirements for ~~the an~~ Associates 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.](#)

- (~~s~~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](#), ~~or one hundred and thirty-five (135) quarter hours of graduate credit~~, or [the equivalent](#).
- (~~t~~27) "Enrollment" refers to those students who ~~have completed the institution's application forms, submitted a financial deposit where required, and have actually~~ attended one [\(1\) or more sessions of class](#), ~~es, or, turned in one (1) assignment, or received one (1) distance learning lesson in the case of home study programs, received one or more lessons.~~
- (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.](#)
- (~~u~~29) "Educational service" ~~means an individual or business established to provide services such as, but not limited to, a testing service, test preparation or a business that assists people in gaining academic credit for life experience, non-accredited courses or non-college training~~[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.](#)
- (~~v~~31) "General education courses" ~~means~~[are general education core or](#) 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.~~.~~
- (~~w~~32) "Independent certified public accountant" means a ~~CPA-certified public accountant~~ not associated with the institution, ~~or its owners, or its affiliated businesses, especially in such a way that a conflict of interest or appearance of conflict arises.~~
- (33) ["In-field placement rate" means the Number Placed In-Field as a percentage of number placeable, that is, In-Field Placement Rate = Number Placed In-Field/Number Placeable x 100.](#)
- (~~x~~) ~~"Institute" means a postsecondary institution offering courses of study and training not usually associated with traditional liberal arts degrees. Appropriate credentials awarded would include applied science degrees, certificates, and diplomas such as the Associate of Applied Science (A.A.S.)~~
- (~~y~~34) "Institutional director" means the ~~institutional executive~~[individual](#) designated by the institution to assume responsibility for [ensuring that](#) the conduct of the institution and its agents [are](#) within ~~these rules and the Act~~[the Act and these rules](#). ~~Further, the institutional director will serve as the official contact for all business conducted between the institution and the Commission and maintain complete authorization files.~~
- (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.
- ~~(z) "Long 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.~~
- (~~aa~~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, ~~or 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.
- ~~(bb) "Non-exempt institution" means all postsecondary institutions not specifically exempted under provisions of T.C.A. §49-7-2004 of the Act or Section 1540-01-02-.05 of these rules and means all instructional sites which must have separate authorization unless, in the view of the Commission, the instructional locations are in sufficient proximity for facilitation of support services and administration.~~
- (~~ee~~40) "Out-of-state institution", ~~as applied to describe means~~ an authorized postsecondary educational institution, ~~means an 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.
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- (~~dd~~42) "Physical presence" means ~~actual~~ 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; an educational service; dissemination of educational credentials; enrollment; solicitation or advertising. Physical presence as further outlined for purposes of authorization shall include **but not be limited to:**
- 1.(a) operating Aan instructional site within the state;:-
- 2.(b) offering Iinstruction within or originating from Tennessee designed to impart knowledge with response utilizing teachers, trainers, counselors ~~etc.,~~ or

computer resources, ~~or computer linking (e.g. internet)~~, or any form of electronic ~~telecommunications~~ means;

- ~~3.~~(c) ~~Dissemination of~~ granting an educational credential from a location within the state;
- ~~4.~~(d) using A an agent, recruiter, institution, or business that solicits for enrollment or credits or for the award of an educational credential; or
- ~~5.~~(e) A 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 ~~hold a certificate of authorization~~ be authorized by the Commission.

(43) "Placement rate" means the number placed as a percentage of the number placeable, that is, Placement Rate = Number Placed/Number Placeable x 100.

~~(ee44)~~ "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. ~~means an entity which maintains a place of business within Tennessee, or solicits business in Tennessee, and which offers or maintains a course or courses of instruction or study, or at which place of business such a course or courses of instruction or study are available through field instruction, classroom instruction or by long distance learning or both to a person or persons for the purpose of training or preparing the person for a field of endeavor in a business, trade, technical, service or industrial occupation, for a vocation, or for the award of an educational credential, except as excluded by the provisions of these rules and the Act.~~

~~(ff45)~~ "Quarter" is a period of instruction into which the academic year ~~may be~~ is divided. A quarter must consist of at least ten (10) weeks.

~~(gg46)~~ "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 ~~for one quarter, or two (2) hours of laboratory experience per week for one quarter,~~ 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.

~~(hh48)~~ "Residence-Residential course" means a course in which the student comes to an institution's ~~sal campus or instructional site~~ authorized location as opposed to a course where the student ~~stays at home (i.e. Long Distance Learning)~~ and the instructor are in different locations.

~~(ii) "SACS Commission on Colleges" means the Commission of the Southern Association of Colleges and Schools which accredits degree-granting postsecondary institutions.~~

~~(jj) "School" means (1) A unit within a college or university that offers specialized instruction (i.e., a school of engineering). (2) An institution that offers specialized instruction in areas (i.e., driving, modeling, basic travel training) not usually associated with college or~~

~~university education. Appropriate credentials awarded would include certificates and/or diplomas. Institutions using the name of "school" do not usually offer degrees.~~

- (~~kk~~49) "Semester" is a period of instruction into which the academic year ~~may be~~ divided. A semester must consist of at least fifteen (15) weeks.
- (~~H~~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 ~~for one semester or~~, two (2) hours of laboratory experience per week ~~for a semester~~, or three (3) hours of intern/externship experience per week or the equivalent number of hours.
- (~~mm~~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. ~~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.~~
- (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.
- (~~nn~~55) "Tuition" ~~shall mean~~ but not be limited to, any ~~money or~~ fee involving the student, actually charged or tracked as a bookkeeping item for instruction ~~/training~~ 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.
- (~~oo~~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 ~~means at any given time, the total of refunds due former students, all tuition and fees that have or will be collected from students prior to graduation and which would be refundable pursuant to 1540-01-02-.17 of these rules, and any tuition and fees collected in advance from prospective students.~~
- (~~pp~~58) "University" means a postsecondary educational institution that provides facilities for teaching and research, offers ~~traditional 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. ~~Some examples of traditional degrees are: Bachelor of Arts, Bachelor of Science, Bachelor of Fine Arts, Master of Arts, Master of Science, Master of Fine Arts, Master of Business Administration, Doctor of Philosophy, and Doctor of Education.~~
- (~~qq~~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, Withdrawal Rate = (Number of Withdrawals - Special Circumstance Withdrawals)/Program Enrollment x 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 ~~entity~~ may create a physical presence ~~advertise, solicit, recruit, enroll or operate a postsecondary educational institution as given in the Act and these regulations until so authorized for operation in the state unless the location is authorized by an affirmative vote of the Tennessee Higher Education Commission during a scheduled 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) Depending upon the individual circumstance in reference to exemption categories, any of the following determining factors along with physical presence may qualify an operation for required authorization:
  - ~~(a) Operating under the definition of postsecondary educational institution as given in the Act and these regulations.~~
  - ~~(b) Issuance or award of any educational credential as given in TCA § 49-7-2003(7).~~
  - ~~(c) Fees and/or tuition charged, tracked or maintained on the books for instruction or training in a postsecondary educational institution or business operating as such.~~~~
- ~~(3) Businesses with vocational training programs that solicit or recruit students as 'employees' with phrases such as, but not limited to, "inexperience - will train" or "experience not required" must provide all training related to that job at no cost to the individual. Payroll deductions, minimum employment periods as a result of a company's 'investment' in the employee, or fees levied if an individual leaves that employment, or similar practices, shall constitute a fee and/or tuition for training which requires authorization for the operation as a postsecondary educational institution.~~
- ~~(4) Institutions with a physical presence in Tennessee providing postsecondary training / education, that forward student records to another school or any other source whether in this state or elsewhere for the award of an degree or any other educational credential shall be required to be authorized for operation.~~
- (52) Commission Staff may recommend that the Executive Director take adverse action against any unauthorized ~~individuals, businesses, or institutions~~ requiring authorization as a postsecondary educational institution ~~determined by Commission staff to be currently operating as a postsecondary educational institution pursuant to the Act and these regulations and not expressly exempted by complete conformance to TCA § 49-7-2004 and/or Postsecondary Regulation 1540-01-02-.05 shall be subject to review by Commission staff for recommendation to the Executive Director for action or referral.~~
  - ~~(a) U. Such entities~~ authorized schools ~~determined to be operating as a postsecondary educational institution~~ must make an immediate good faith efforts toward compliance by submitting an complete 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. ~~package with appropriate fees. Failure to comply may result in adverse action and/or referral to other state or federal agencies for review.~~

~~(6) Institutions seeking authorization should refer to Minimum Authorization Standards and Requirements 1540-01-02-.06.~~

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

1540-01-02-.05 ~~Exemption~~ 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. ~~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:~~

(a) ~~any entities offering e~~ Subject to subparagraph (b) of this rule, education, instruction or training that are ~~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 ~~without charge, which shall include taking a payroll deduction or requiring a minimum length of employment; or-~~
2. maintained or given by a U.-S. Department of Labor or state recognized labor organization, ~~without charge, (1) to its membership or apprentices or (2) at no cost to the individual; or;~~
3. financed and/or subsidized by public funds, at no cost to the individual ~~without charge to the students, and~~ having a closed enrollment; ~~or-~~
4. given under a contract agreement, having a closed enrollment, ~~at no cost to the student~~ at no cost to the individual, and does not offer ~~degrees or educational credentials such as but not limited to diplomas or special certifications~~ that in the opinion of ~~the Commission~~ Commission Staff are specifically directed toward new or additional vocational, professional, or academic goals; ~~or-~~
5. given to a closed network of franchise owners and their employees at no cost to employees through a franchisor that does not advertise or provide its training to the general public and wherein such training is not the primary business of the franchisor.

(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) To operate within exemption status, the following guidelines shall be used:-~~

- (a~~2~~) ~~Any institutions or program that clearly qualify~~ Any institution or program that clearly qualifies as exemption ~~under the Act and/or these regulations~~ under the Act ~~these rules after Commission staff review shall be considered~~ is exempt from authorization without a determination of the vote 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

~~(b) Institutional exemption is subject to annual staff review and/or revocation any time the~~

~~activity deviates from the original determination factors for exemption.~~

- ~~(c) Exemptions secured under this section of the rules are effective for each authorization year beginning on July 1, except as individuals or groups of institutions are notified prior to June 15 preceding any authorization year by a letter from the Executive Director of the Commission which shall state the bases for removal of any exemption.~~
- ~~(d) Exemptions can be revoked or amended by the Commission as they pertain to individual institutions whenever it is determined by the Commission that an institution exempted by the Act or these regulations has not acted in accordance to the purpose of T.C.A. § 49-7-2002, 'Legislative intent'.~~
- (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: ~~Institutions or educational providers seeking an exemption status (or not wanting to pursue authorization) that in the opinion of Commission staff do not clearly qualify under the exemption categories given in the Act and these rules will be required to complete an Exemption Request Form. The form shall include but not be limited to:~~ copies of all institutional materials; brochures; advertising; state charter or business license; or organizational ties and/or contracts with other educational providers ~~and a descriptive narrative of how the organization qualifies for exemption specifically citing the Act and/or rules. 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.
- ~~(a) Based upon the submitted material Commission staff shall make a written determination of institutional status. If the institution is aggrieved by that determination, the party may appeal in the manner provided by Rule 1540-01-02-.02(2)(b) and T.C.A. § 49-7-2010(b).~~
- (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 ~~AUTHORIZATION~~ STANDARDS FOR AUTHORIZATION AND ~~REQUIREMENTS~~.

- ~~(1) (1)~~ (1) Institutions authorized to operate or seeking authorization to operate in Tennessee must meet the minimum ~~requirements standards for authorization~~ stated in the Act and these rules ~~Tennessee Code Annotated § 49-7-2006 and as further defined in these regulations.~~ 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) — Meet the definition of a postsecondary educational institution as given in the Act and/or these postsecondary regulations.~~
- ~~(3) — Have physical presence in the state as given in these regulations.~~
- ~~(4) — Establish a charter or business license in the state of Tennessee for the proposed institution.~~
- ~~(5) — Financial stability to start up and initially operate a postsecondary educational institution demonstrated through a certified audit or statement acceptable to the Commission of the resources to be utilized in the school.~~
- ~~(6) — Ability to secure an institutional surety bond or like security described in rule 1540-01-02-.07(7).~~
- ~~(7) — Have an educational program(s) consistent with standards in Tennessee for length, content and quality for the educational credential offered in compliance with the Act and these regulations.~~
- ~~(8) — All programs must include training and substantive content to attain outcomes stated as the program purpose and mission of the institution.~~
- ~~(9) — No principal party, owner or administrator involved with the proposed institution 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.~~
- ~~(10) — Before an institution is granted temporary authorization, the following requirements and standards required of an approved school must be met in preauthorization and maintained operationally.~~
  - ~~(a) — Complete all required initial authorization materials in package provided by the Commission staff with payment of all corresponding fees.~~
  - ~~(b) — Verification of a stable physical presence and/or a physical site acceptable to the Commission and these rules.~~
  - ~~(c) — Establish and maintain all Operational and Administration Standards, such as educational, financial, admissions, enrollment, instructor, etc., as given in these rules.~~
  - ~~(d) — New or revised programs must conform with all requirements given in these rules under New Program or Change in Program.~~
  - ~~(e) — Compliance for each of the educational credential(s) offered by the applicant institution, with requirements as given under Non-Degree Granting Institutions or Degree Granting Institutions.~~
  - ~~(f) — Demonstrate compliance for branch sites or expansion of programs by prior approval or prior notification with the institution's accrediting body wherever necessary to be consistent with the requirements of the accrediting body and the federal regulations.~~

(42) No out-of-state institution will be considered for authorization if it is not authorized in the state where it is primarily located.

~~(12) Any institution based primarily outside of Tennessee which proposes to set up a branch in Tennessee and is not accredited by an agency recognized by the Commission must forward reasons why resources would not best be spent on accreditation at current site.~~ (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.

~~(13) An exception to any part of the Minimum Authorization Standards must be reviewed on an individual basis by the Commission.~~

(45) School 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) No postsecondary educational institution under the Act and these rules may not use the word "university" in their name unless the school 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) No postsecondary educational institution under the Act and these rules may use the word "college" in its name without a qualifier if the institution:~~

1. ~~their~~ 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 name unless the school has been so approved by a regional accrediting body recognized by the U. S. Department of Education, or uses an appropriate qualifier along with the word "college", such as "career", "vocational", or Bible. For institutions authorized after October 1, 2016 "business", "technical", "art" etc., the qualifier shall precede the word college. or in the case of a religious institution, "Bible" or a denominational term.~~

- ~~(c) All institutions authorized after July 1, 1997 using "college" in accordance with item 14(b) above, must achieve regional or national accreditation from an accrediting body recognized by the U. S. Department of Education in a timely manner while demonstrating consistent good faith efforts toward achieving that goal.~~
- ~~1. New institutions authorized after July 1, 1997 that demonstrate in the application process, that the school is capable by program length, content, adequate physical site and administrative capability of achieving accreditation, may initially use "college" in the institutional title as outlined in 1540-01-02-.06(14)(b) above.~~
  - ~~2. Institutions may use "Junior College" as a qualifier in the name of the institution provided that the institution has a current articulation agreement with a regionally accredited college or university. Loss of the articulation agreement will require removal of "Junior" as a qualifier, to be replaced on a schedule agreeable to the Commission with an institutional name in compliance with these rules.~~
  - ~~3. Institutions that fail to make good faith efforts toward accreditation or achieve accreditation in a timely manner shall be required to remove "college" from the institutional title.~~
  - ~~4. The Executive Director may consider an exception to 1540-01-02-.06(14)(a), (b) given above for special or unique circumstances. Institutional waivers will be null and void with a change in ownership.~~

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 ~~deadline~~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 submissions~~ application is an application that is missing any information or contains noncompliant information. Commission Staff ~~as given below in Authorization - What Constitutes a Complete Application, or applications submitted after the established deadline~~ may ~~be defer~~ consideration of the application ~~red~~ to the next quarterly meeting due date ~~at the discretion of staff.~~
  - (d) If an application is deferred, the institution shall have until the next established due date to complete the application.

(b) 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. ~~s that voluntarily or involuntarily defer an application before the Committee will have two additional Committee/Commission meetings to complete, correct and/or submit the application by that established deadline date. Failure to complete the application process in the established time extension will require a new application and loss of all previously paid fees.~~

~~1. Exceptions must be requested in writing and granted by the Executive Director.~~

(2) Initial Authorization Application: ~~Authorization—What Constitutes a Complete 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. ~~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~~ The application which shall include ~~require~~ at least the following a minimum:

1. a ~~title or~~ name of the institution that complies in compliance with the Act and these rules;

~~2. a copy of the Tennessee state charter as filed with the Secretary of State (incorporated) or local business license (sole proprietorship);~~

2. evidence of a business account with a financial institution that is federally insured in said institution's name;

3. 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 ~~ownership and/or controlling officers;~~

4. 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;

5. 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;

~~5. list of instructional equipment for each program (owned or leased);~~

6. qualifications for instructional staff and supervisors;

7. 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 ~~site-responsible for authorization contracts and maintenance of records and all other duties as described under Personnel and Instructor Qualifications (1540-01-02-.16);~~

8. a description definition of any administrative structure above the institutional director with the signature of the official that will notify the Commission if the director is replaced;
- ~~9. a check or money order payable to the State Treasurer for Tennessee for such fees as prescribed under these rules;~~
- ~~409. a continuous~~ institutional surety bond ~~as described by rule 1540-01-02-.07 or as prescribed by T.C.A. §49-7-2013;~~
- ~~14~~10. a copy of the enrollment ~~contract or agreement described in these regulations~~the institution will use following receipt of authorization;
- ~~42~~11. a copy of the pre-enrollment checklist the institution will use following receipt of authorization~~Enrollment Disclosure Standards (1540-01-02-.13) checklist if not incorporated within the enrollment agreement (contract);~~
- ~~13. information pertaining to institutional facilities ownership, length of any lease and time in present quarters. Information must include total square feet, available floor space for conducting programs, and subtotals for classrooms, offices, and library space (with number of volumes held). Instructional equipment (specify owned or leased) must be listed and described. Current verification of fire and sanitation inspections of educational facilities (and student housing owned by institution) must be filed as described in 1540-01-02-.07 of these rules;~~
- ~~44~~12. a ~~draft or~~ copy of the institutional catalog the institution will use following receipt of authorization ~~(see 1540-01-02-.11);~~
13. a copy of the student transfer of credit disclosure statement required by T.C.A. § 49-7-144;
- ~~15. a complete description of the proposed educational programs in compliance with the Act and these rules;~~
- ~~16. a complete syllabus for each course proposed that demonstrates sufficient content and depth for the proposed level of the program and credential offered;~~
- ~~47~~14. any specific requirements as outlined under ~~degree granting and/or non-degree granting sections of these regulations~~Rule .08 of these rules;
15. 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;
- ~~48~~16. 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;~~a copy of the most recent audits or program reviews of such programs by any applicable non-profit, state or federal agencies, including, but not limited to, any student guarantee agency and the United States Department of Education;~~

~~19. evidence of institutional financial stability as follows:~~

~~17. provide financial statements as follows:~~

- (i) as to institutions that are not currently operating a location,
  - (I) a year-to-date balance sheet that demonstrates resources adequate to fund facilities maintenance and overhead, staff and faculty payroll, books, supplies or equipment utilized by students, and general operating costs for a minimum of ninety (90) days and
  - (II) pro forma income 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)(e) of these rules; or
- (ii) as to institutions that are operating a location,
  - (I) current financial statement with a balance sheet that demonstrates resources adequate to fund facilities maintenance and overhead, staff and faculty payroll, books, supplies or equipment utilized by students, and general operating costs for a minimum of ninety (90) days and
  - (II) pro forma income 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)(e) of these rules and financial statements of all owners; and

18. such other information or clarification deemed necessary by Commission Staff.

- ~~(i) sufficient finances to establish and conduct proposed operation;~~
- ~~(ii) audited financial statements consistent with generally accepted accounting principles and signed by a certified public accountant not associated with the institution or its owners;~~

~~20. the balance sheet in the financial statement must reflect owner's (proprietorship, partnership, corporation, other, etc.) assets and liabilities.~~

~~(3) Each application for a certificate of authorization or change of ownership must be signed by the applicant and signature(s) must correspond with required names on surety bonds. If the applicant is a partnership, all partners must sign. If the applicant is a corporation, it must be signed and certified by the president and secretary; all officers of the corporation must be listed.~~

~~(4b) A separate application for authorization, which is site specific, must be made for each location located outside of reasonable walking distance from a previously authorized location from the main site. The Commission staff Commission Staff may make reasonable exceptions for narrow purpose, highly structured programs at multiple locations where, in view of the Commission, administrative requirements are limited and precise.~~

~~(5) The applicant institutional director must sign and date, on forms provided by the Commission, the director's intention to:~~

- ~~(a) conduct the institution in accordance with the Act and rules established by the Commission;~~
- ~~(b) advertise or solicit using institutional employees familiar with these rules;~~
- ~~(c) advise the Commission within a reasonable time in advance if the controlling officers change or the school ceases operation;~~
- ~~(d) notify the Commission of staff changes by forwarding staff information forms for new staff and informational letter for staff terminations;~~
- ~~(e) advise the Commission of any application to operate in another state (Tennessee institutions only);~~
- ~~(f) sign significant operational documents (such as those vouching for accuracy of staff information, moral character, program revisions, etc.); and~~
- ~~(g) forward, if participating in federal financial aid programs, a copy of each audit of such programs by applicable state and federal agencies, applicable non-profit, state or federal agencies, including, but not limited to, the Tennessee Student Assistance Corporation and the United States Department of Education.~~

~~(6) Bond Requirements for Institutions:~~

- ~~(a) — Institutions not exempted from surety bond provisions, must on forms provided by the Commission, secure for student indemnification purposes, from an insurance company licensed in Tennessee, a surety bond for the penal sum of \$10,000 for in-state institution and \$20,000 for out-of-state education institution, including branch campuses as specified in T.C.A. 49-7-2013, except as follows:~~
- ~~1. — In-state institutions with substantially less unearned tuition or student exposure than \$10,000 may post a surety bond equal to 125% of the maximum unearned tuition or student exposure rounded upward to the nearest thousand dollars (prior written administrative agreement by the Commission staff is required).~~
- ~~(7) — Out of state institutions must, on forms provided by the Commission, secure a surety bond for agents in the penal sum of \$5,000 per agent from a surety company authorized to do business in Tennessee with the applicant institution as principal. Such applications must be accompanied by verification by the issuing agency that the individual seeking a permit is covered by a \$5,000 surety bond.~~
- ~~(8) — Bonds provided by institutions under Section 1540-01-02-.07(7) must be accompanied by the name, office address, and phone number of the issuing insurance company representative and the bond must be site specific.~~
- ~~(9) — Bonds provided by institutions under Section 1540-01-02-.07(7) must be identified on the top half of the first page by the name and the address of the institution. Bonds and verification of bonds should be forwarded to the Commission by institutional directors, and not directly from issuing companies.~~
- ~~(10) — Certificates of deposit or a cash deposit with a bank may be accepted in lieu of the bond with approval of the Commission staff. Such deposits are subject to the same terms and conditions provided for in the surety bond requirement under this regulation.~~
- ~~(11) — Fire and Sanitation Inspections:~~
- ~~(a) — Applicant institutions must secure, from appropriate local agencies, documentation that fire and sanitation codes are met by the proposed instructional facilities. If such inspections are unavailable, the institution must present a copy of a recent letter from the local inspection agency indicating that such inspections are unavailable.~~
  - ~~(b) — Tennessee institutions seeking initial authorization and renewal must maintain documentation in their authorization records that a fire and sanitation inspection has been successfully passed during the past twelve months and, further, the institution must notify the Commission of the most recent inspection dates as part of the renewal application. If such inspections are unavailable, the institution must present a copy of a recent letter from the local inspection agency indicating that such inspections are unavailable.~~
  - ~~(c) — Out-of-state institutions must forward to the Commission a copy of fire and sanitation inspection reports and these reports must be made at least every twelve months.~~
  - ~~(d) — Commission staff may seek supplemental fire and/or sanitation reports from appropriate local or state agencies.~~

(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.

(124) ~~New Ownership~~ / Change in 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.

~~The following constitutes new ownership:~~

- ~~1. in the case of ownership by an individual, when more than 50% of the institution has been sold or transferred;~~
- ~~2. in the case of ownership by a partnership or a corporation, when more than 50% of the institution or of the owning partnership or corporation has been sold or transferred;~~
- ~~3. when the board of directors, officers, shareholders, or similar governing body has been changed to such an extent as to significantly alter the management and control of the institution.~~

~~(b)~~ A person or persons purchasing~~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. an institution authorized to operate shall comply with all the requirements for securing an initial, new authorization including new program applications for each program.~~

(e) The Change of Ownership Application shall ~~In addition, a copy of the~~require that the new owner or governing body provide the sales contract(s), bill(s) of sale, deed(s), and all other instruments documents necessary to transfer ownership of the institution ~~shall be submitted to the Commission.~~

~~(c) In the event of a change of ownership, 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 standard established procedure by recommendation of the Committee for Postsecondary Educational Institutions and affirmative vote of the Commission.~~

~~(d) The sale or transfer of ownership interest after the death of an owner of an institution to either a family member or a current stockholder of the corporation is not considered a change in ownership, and the executive director may determine that other transfers should also be excluded from these requirements.~~

~~(135)~~ New Program or Change in Program Application and Program Revision Notification:

~~(a) Vocational program names and objectives must generally coincide with or be equated with the Dictionary of Occupational Titles published by the U.S. Department of Labor and/or the Classification of Instructional Programs published by the U.S. Office of Education, National Center for Education Statistics.~~

~~(b) New institutions proposing to offer programs similar to those conducted by Tennessee institutions under the Tennessee desegregation plan must submit a description of the anticipated effect of the proposal on the racial composition of higher education institutions in Tennessee.~~

~~(ea)~~ 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.

~~New institutions must submit a rationale with supporting data to justify initiation of programs proposed.~~

(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.

~~(d) — Authorized institutions must submit to the Commission a supplementary application if additional programs are proposed during any authorization year and the program must be authorized prior to operation, which includes advertising or solicitation. Applications must be received by the quarterly deadline established by Commission staff to be included on the ensuing Committee and Commission agenda.~~

~~(e<sub>c</sub>)~~ When an Ongoing institutions that make changes revises to an existing program(s) an previously approved program by the Commission must file a , 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 New Program Application if the program changes revision amounts to change of more than exceed twenty-five percent (25%) in one calendar year the last twelve (12) months, or if in the opinion of staff Commission Staff determines a significant change revision has occurred, then the institution must submit a New Program Application prior to implementing the revision. Changes of less-

~~than 25% should be reported by letter as a file item to the Commission detailing changes made. All changes must be reflected in the institutional catalog.~~

~~(f)~~ Institutions shall not arbitrarily add a course ~~or courses~~ to an existing program in which a student would incur additional time ~~and/or~~ expense beyond the catalog requirements at the time of enrollment, unless the addition is in response to: ~~demonstrated-~~

1. demonstrated educational necessity;
2. a reasonable program completion period ~~had~~ elapsed;
3. state approval agencies requirements;-
4. U.S. Department of Education recognized accrediting accreditor agencies requirements; or ~~for~~
5. requirements of professional licensure requirements ~~certifications or licenses.~~

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

~~(446)~~ New Location / Change of Address 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.

~~An application from an authorized institution to reflect a new location shall be filed and include all documents designated by the Executive Director as being necessary with the appropriate fee. Documents shall include but not necessarily limited to: (1) evidence of satisfactory health inspection, (2) evidence of satisfactory fire inspection, (3) all physical material and building requirements given under Initial Authorization.~~

(c) Commission Staff shall approve the application after it determines that the application is complete and conducts a successful site visit.~~Approval may be issued after the new facilities have been inspected and the application is complete.~~

(d) If a move is beyond ten (10) miles and a student is prevented from completing the training at the new location~~as determined by the Executive Director~~, 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~~ 1540-01-02-.08 REGULATIONS FOR SPECIFIC ~~School Types~~ INSTITUTIONS AND PROGRAMS.

~~(1) General:~~

~~(a) Institutions offering programs of legal interest to other state agencies must, if directed by the Commission, provide information necessary for the dual review of the program. (For example, any institution proposing a teacher education program for the purpose of teacher licensure must also be reviewed by the State Board of Education).~~

~~(b) Authorized institutions that promote, advertise or use prepared materials of any entity that offers vocational / professional certifications (that are not part of the school's authorized educational credential) or certification exams, (e.g. national certifying exam for Phlebotomy) must demonstrate to the Commission clear benefit to the students prior to usage. The Commission upon review may rule to:~~

~~1. allow promotion and usage because of benefits to the student;~~

~~2. allow promotion and usage but with clear disclosure to the students with language such as, 'this certification is voluntary and is not required for employment in the state of Tennessee' or 'this certification is voluntary and is not necessarily used as a standard of recognition for employment within the industry;~~

~~3. deny usage. (see Prohibitive Acts 1540-01-02 .18).~~

~~(c) Unauthorized institutions that promote, advertise or use prepared materials of any entity that offers vocational/professional certifications may be required to become authorized for such activity.~~

~~(d) Institutions must adhere to all copyright laws and observe intellectual property rights in conducting the school.~~

~~1. Using video tapes or other forms of telecommunication as a large portion of the contact hours in a program or on a per class basis for the purpose of granting educational credit, must have implied consent by purchase or the written consent of that instructor and/or the institution that produced the educational material, prior to incorporating them into the curriculum.~~

~~(2) Non-Degree Granting Institutions:~~

~~(a) Non-degree programs which are designed primarily for job entry or upgrading of skills must be described in clock (contact) hours.~~

~~(b) Non-degree 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 effect outcomes.~~

~~1. Institutions must provide a minimum program length that adequately prepares students for entry level employment.~~

~~2. Program lengths that exceed standard or currently acceptable times or program periods established by regulations and/or statues must justify expansion of training in terms of exceptional student benefits. Such programs may also be required to review curriculum to evaluate consolidation of classes and course material.~~

~~(3) Degree Granting Institutions:~~

~~(a) New institutions seeking authorization to offer degrees in the state of Tennessee or new program applications for a degree program must submit the application by the deadline date established by Commission staff, which shall be 45 to 60 days prior to the quarterly meeting of the Committee on Postsecondary Educational 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.~~

- (ea) Authorization to offer any degree in the state will require either institutional accreditation by a U.S. Department of Education recognized accreditor ~~as defined in these regulations~~ or authority to grant degrees by affirmative vote of the Commission. ~~Accredited institutions shall be deemed during initial authorization to have met the minimum requirements to offer degrees.~~
- (eb) ~~Non-~~Unaccredited institutions seeking authority to grant degrees ~~in the state~~ must meet, in addition to the requirements in the Act and these regulations ~~these rules~~ for ~~temporary or regular~~initial authorization, at a minimum ~~the additional fee as given in these regulations and demonstrate compliance with, but not limited to the following standards:~~
1. the ~~operation~~institution shall incorporate instructional procedures, texts, and materials appropriate to the purpose, curriculum and standards of other postsecondary ~~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. a syllabus for each course offered;~~
  43. library resources and holdings ~~that~~ shall contain up-to-date titles, be available and accessible to all enrolled students and commensurate with the proposed degree level;
  54. demonstration that the degree and the program has merit and value academically, professionally, or vocationally in Tennessee; and
  65. 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.
- (ec) 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 ~~non-~~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.
- ~~All general education courses must be taught by holders of baccalaureate degrees with at least twenty-five percent of the general education staff with earned master's degrees or equivalent.~~
- (fd) 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.

~~(g) Degree program admission policies must be at least the following:~~

- ~~1. undergraduate degrees must require a high school diploma or equivalency, and~~
- ~~2. graduate degrees must require at least a baccalaureate degree from an institution judged to be appropriate by the Commission.~~

~~(4) Long Distance Learning:~~

~~(a) Required authorization of long distance learning institutions shall be reviewed based upon Commission staff evaluation of physical presence. Computer networks or other electronic delivery systems or other forms of long distance learning that might have institutional components in multiple locations outside of this state will be reviewed based upon origination of but not limited to any of the following from Tennessee: instruction, institutional administration or issuance of an educational credential.~~

- ~~1. No ruling by the Commission regarding authorization or exemption of a long distance learning provider will be interpreted to limit review by any other state agency concerning issues of consumer protection and disclosure.~~

~~(b) All authorized long distance learning institutions must provide a printed catalog, enrollment disclosure statement and a contract as required in these regulations. Institutions that enroll students by means such as computer network or telecommunications must provide evidence that the student has acknowledged receipt of the required information.~~

~~(c) Home study or long distance learning institutions must meet directly and indirectly all requirements of the Act and these regulations and must seek authorization for a specific location, assign specific administrative responsibilities at each separately authorized site to a director for adequate and appropriate staffing to serve the stated purpose and to make reports as directed by these rules, and as requested by the Commission staff.~~

~~(d) Long distance learning courses or programs must consist of at least the following:~~

- ~~1. a preliminary lesson or set of instructions on how to study by the home study method, or adequate study instructions per assignment;~~
- ~~2. current and accurate text or lesson materials; and~~
- ~~3. instructional service or individualized feedback on each unit assignment which must be based on examination questions or problem assignments which thoroughly stress the important phases of the subject presented.~~
- ~~4. demonstration that instruction in each course including general education courses is presented by a qualified instructor(s), and that required student evaluation or feedback for each course or lesson is also by a instructor qualified in that specific course or subject matter area.~~

~~5. evidence that adequate library or research resources are available to all students that may enroll appropriate to the type and level of the educational program and credential offered.~~

~~6. educational goals and overall program goals are achievable through long distance learning and that graduates of distance education exhibit skills and knowledge equivalent to resident programs of a similar nature.~~

(52) 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~~Schools:~~

(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.

~~(6) Truck Driving (CDL) Schools:~~

~~(a) Authorized truck driving schools may advertise in the 'help wanted' section of the newspaper classifieds provided that the advertisement adheres to all other regulations given in 1540-01-02-.20 and within the advertisement it clearly indicates with specific language that this is a "school advertisement", "advertisement for training" or a "training opportunity with [school's name]".~~

~~(b) Advertisements may refer to truck lines or carriers by name with the written permission of that company and use language such as "training agreement with", "training contract with" or "exclusive training for [carrier's name] in Tennessee". If a school mentions or alludes to multiple training agreements with carriers, the advertisement must give a specific number and have prior approval from Commission staff. All claims related to carriers must be documented and on file at the school.~~  
(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.

~~(7) Modeling Schools:~~

- ~~(a) Modeling schools that also operate a placement or talent agency must maintain clear separation in function and advertising the agency from the school.~~
- ~~(b) Talent seminars, interviews or 'talent searches' may not be used to enroll individuals in modeling schools or training.~~
- ~~(c) Schools that operate as a 'finishing school', exclusively for personal deportment or for enrichment may not advertise or conduct courses that implies or suggests vocational modeling or related goals.~~

~~(6)~~ (8) Computer Training:

- ~~(a) Businesses offering limited computer training in hardware, software, delivery systems or any related technology for clients or customers (closed enrollment) directly related to a sale of equipment or services are exempt from the provisions of authorization.~~
- ~~(b) Businesses offering short term computer training 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 the Commission courses using various software are offered concurrently toward a vocational goal. (e.g. word processing software offered toward secretarial goals).~~
- (ae) 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.

~~(9) Teacher Training (K-12) or Licensing or Recertification:~~

- ~~(a) The Tennessee State Board of Education or the Commission may request a dual review of any institution or business with physical presence in Tennessee offering courses related to but not limited to teacher (K-12) licensing, recertification or career ladder. For accredited institutions with teacher education programs using long distance learning (but using targeted direct mail advertising), the Commission may grant a waiver for authorization if State Board of Education or a local public school district has accepted, endorsed or approved for graduate credit transfer any portion of the program. Such a waiver shall not be granted for any institution outside of the provisions stated above and may be individually retracted if in the opinion of the Commission the advertising is misleading regarding outcomes or credits earned.~~

~~(10) Seminars / Workshops:~~

- ~~(a) Seminars or workshops of short duration that are motivational, enrichment, recreational, avocational or solely for professional enhancement as determined by Commission staff shall be considered exempt from authorization requirements.~~
- ~~(b) Upon review by Commission staff a seminar/workshop provider regardless of length that presented the instruction in such a way to suggest a vocational end~~

~~may be required to become authorized in the state, or clarify through public advertising that the seminar/workshop is in fact enrichment or recreational.~~

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-.09-10 AUDITS. ANNUAL RENEWAL FOR AUTHORIZATION.

- (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.
- ~~(1) All unaccredited authorized institutions and institutions under Temporary or Conditional Authorization must submit an annual report or renewal application on a form provided by Commission staff. The annual authorization year will be from July 1 through June 30 and annual application or reports submitted is due each October 15 and must be accompanied by an annual fee as prescribed by these rules.~~
- ~~(2) Accredited institutions under Regular Authorization will be granted upon affirmative vote of the Commission an authorization certificate for each site for a period of up to six years. The Commission, when possible will tie the authorization period to the accrediting body's granting of accreditation / reaffirmation cycle and require each October 15 (in lieu of the Commission's annual renewal package) the most recent annual reporting documents submitted to the accrediting agency along with any minimum forms required by the Commission.~~
- ~~(3) Annual reports or renewal applications postmarked after October 15 or other due date will be assessed a late renewal fee as described in Rule 1540-01-02-.25 FEES.~~
- ~~(4) For unaccredited institutions and institutions under Temporary or Conditional Authorization, the annual report or renewal application must be accompanied by the following:~~
- ~~(a) any changes or additions to information previously submitted as part of the basis for authorization;~~
  - ~~(b) copy of current catalog with major changes cited;~~
  - ~~(c) the latest financial statement for the most recent institutional fiscal year as given under Financial Standards, 1540-01-02-.14 and shall include:
    - ~~1. a balance sheet (statement of financial position);~~
    - ~~2. statement of the results of institutional operation including gross amount of tuition and fees earned and total refunds during the fiscal year;~~~~
  - ~~(d) a renewal fee (check or money order) made payable to the State of Tennessee for such fees as stated under these regulations.~~
  - ~~(e) an enrollment report for the first enrollment period on or after July 1 of previous year through and including the last enrollment on or before June 30 of the current year;~~
  - ~~(f) a list of all institutional personnel including staff, instructors and agents;~~
  - ~~(g) summary data for the most recent institutional fiscal year on students participating in state or federal aid programs;~~
  - ~~(h) such other information or clarification deemed necessary by Commission staff for determination of authorization recommendations and study of institutional and/or enrollees or former enrollees.~~

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

~~1540-01-02-.10~~ **REQUIRED MINIMUM STANDARDS.**

~~(1) — The institutional purpose and objectives must be stated in measurable potential outcomes in a catalog, bulletin, or brochure of the institution.~~

~~(2) — In relation to the size and scope of the institutions, it shall furnish adequate student services to fulfill the mission of the school and provide counseling and / or resources necessary to support programs and claims of the institution. Such services must have staff available to students with the knowledge and skills to effect counseling, guidance and coordination in areas such as; academic standing and satisfactory progress; admissions; employment opportunities or placement; intern/externships; library; financial aid.~~

~~(3) — Administrative capability must be demonstrated in the daily operational standards at the institution. Administrative capability is the ongoing effective coordination of federal, state and accreditation (where applicable) requirements in a positive and educationally enriching environment to the benefit of students. Indicators of the break down of administrative capability may include but not be limited to: 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; multiple findings in several different areas during a institutional site visit.~~

~~(4) — Institutions must annually report program completion rates and placement rates in a format approved by the Commission which may include accreditation standards or an average of comparable rates from Tennessee public institutions. If program completion rates are less than 66%, or if average program withdrawal rates are in excess of 33%, or if average placement rates are less than 75%, those rates shall be monitored, reported on, compared with those of similar institutions, and explained to the extent that it can be determined whether or not the low rate is an indicator of poor educational quality.~~

~~(5) — Liberal arts schools or professional schools that typically do not report vocational placement data may be required to report to the Commission either by testimonial, survey or by some other means that program completers have benefited from the instruction.~~

~~(6) — The maximum pupil teacher ratios acceptable, without special permission from the Commission, are:~~

~~(a) — lecture: 40-1;~~

~~(b) — business laboratory: 50-1 (such as accounting, typing, shorthand);~~

~~(c) — technical and vocational theory: 40-1;~~

~~(d) — technical lab: 40-1 (such as computer programming, data processing) and;~~

~~(e) — vocational lab: 40-1 (such as auto mechanics, drafting, air conditioning).~~

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

~~1540-01-02-.11~~ **11 Institutional Catalog.** **INSTITUTION CATALOG.**

- (1) Each institution must publish a catalog or brochure (a draft copy may be provided for original application) which must that includes at a minimum least the following information;

- (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, ~~and~~ 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 ~~with~~ an explanation of any grading system used, ~~and~~ 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 ~~and the address of training site~~;
- (m) the policy concerning credit granted for previous education, training, and experience and, if none, so state;
- (n) the refund and cancellation policy, including ~~which must describe~~ 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) ~~in catalogs (except for out-of-state degree-granting institutions which choose to make no reference to the Commission) which describe educational programs conducted in Tennessee and with enrollment contracts used by programs outside of Tennessee, a statement provided within the first four pages of the catalog and on the signature page of enrollment contracts,~~ which ~~must read~~ 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 ~~by~~ of minimum standards concerning quality of education, ethical business practices, ~~health and safety~~, and fiscal responsibility”;

- (p) a description of the student grievance procedure, including a listing of
1. the title, address, and telephone number of the institutional employee(s) designated to receive student complaints;
  2. if applicable, the process for escalating or appealing a complaint;
  3. if the institution ~~used a~~allows for nonbinding mediation or voluntary arbitration clause in its enrollment agreement, the catalog must describe the process in its entirety steps required of the student and/or the institution to initiate the mediation process; and
  4. The 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." the licensure staff of the Commission must be in the catalog for grievances not settled at the institutional level;
- (q) a disclosure regarding the specific information pertaining to ability to transfer transferability of 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 (~~fill in 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;
- (34) Catalogs should be written in a way and at a level that allows which enables prospective enrollees to comprehend the information and make informed decisions; and
- (4) ~~Lesser information requirements may be included in the institutional catalog or brochure when the applicant can satisfactorily demonstrate to the Commission that some of the above are not applicable.~~
- (5) ~~Full time students should have a reasonable expectation to complete programs as printed~~

~~in the institutional catalog at the time of enrollment.~~

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

1540-01-02-.122 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 admit-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, would be will be ineligible to obtain licensure in the occupation for which they are the student is being trained. For example, an institution should not admit a student if the institution knows the student has a (ex., certain prior legal convictions that will prevent the student from obtaining licensure render one ineligible to hold certain licenses). 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 such a the student after the student submits a signed, written, in writing for retention by the institution and review by Commission staff, a 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. such ineligibility. This provision, 1540-01-02-.12(1) is not intended to speak contrary to institutions' options to enroll students as non-credit students, auditing students or continuing education students.~~

(3) Basis of admission shall be at a minimum:

(a2) Students enrolling in a certificate or diploma program must possess a high school diploma, a high school diploma equivalency, a current Tennessee license in the field for which the training is intended, 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 Students without high school diploma or GED may be admitted as an Ability to Benefit student into non-degree programs that are customarily not accepted for college credit if the student has terminated secondary enrollment and is beyond the age of compulsory attendance, subject to the following conditions:~~

~~(a) Applicants without a high school diploma or GED shall be tested.~~

~~(b) An exception to these testing provisions, However, may be created for:~~

~~1. individual applicants to non-degree programs where the following four conditions~~

are met:

- ~~(i) The student does not receive federal or state financial aid.~~
- ~~(ii) The student's high school transcript is unavailable.~~
- ~~(iii) The program is short term and the costs are low.~~
- ~~(iv) institutions or programs at an institution composed exclusively of subject matter that does not lend itself to an objective test, upon request, if approved by the Commission.~~
- ~~(c) institution may use either~~ Any test administered for purposes of determining admission shall be a standardized test ~~formerly or currently~~ recognized nationally or by the U.S. Department of Education ~~or, if with minimally acceptable scores as referenced in the test material or by the U.S. Department of Education or only in cases where a standardized~~ such a test is not applicable to the particular subject matter of the program available, a non-standardized test developed by ~~the institution, institutional officials~~ In either case, the institution shall request approval from Commission Staff before using the test and shall state the ~~and approved by the Commission staff with~~ minimally acceptable scores ~~and the maximum number of attempts allowable in a given period of time, for example, three(3) times in a six (6) month period approved by the Commission staff.~~ The following applies to all ability-to-benefit tests:
  - ~~1.(d)~~ Tests shall be administered in a secure environment, ~~for example, (e.g.,~~ monitors present).
  - ~~2.~~ Tests shall not be administered in a manner that is inconsistent with the recommendations of the ~~manner (e.g., frequency) recommended by~~ standardized test developers. ~~Testing policies shall be stated along with the admissions policy published in the institutional catalog.~~
  - ~~3.(e)~~ An agent is not allowed to administer the test, nor is anyone allowed to assist the applicant in answering the questions.
- ~~(f) If the admission test reveals the student to be ineligible as an ability-to-benefit student, the student may be enrolled as a remedial student and may be charged for the remedial program on an hourly pro-rata basis. The student is not obligated for the tuition and fees of the non-remedial regular program until the admission requirements are met.  
—The minimum admission requirement for postsecondary education remain a high school diploma, GED, or a passing score on the admission exam.~~
- ~~(g) Tests administered for purposes other than the determination of admissibility are not governed by 1540-01-02-.12(2).~~
- ~~(3) Institutions which admit enrollees on an ability-to-benefit basis, must submit all documents related to such admission policies to the Commission.~~
  - ~~(4) Degree program admission policies must be at least the following:~~
    - ~~(a) undergraduate degrees must require a high school diploma or equivalency, and~~
    - ~~(b) graduate degrees must require at least a baccalaureate degree from an institution judged to be appropriate by the Commission.~~

- (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-.133 ENROLLMENT CHECKLISTS, ENROLLMENT AGREEMENTS, AND DISCLOSURES- AND DISCLOSURE STANDARDS.

- ~~(1) Accredited institutions that provide and administer a Title IV financial assistance program and grants will follow federal disclosure guidelines. Such institutions will not be required to duplicate any state disclosure item if that disclosure is part of federal or accreditation standards.~~
- (2) Pre-Enrollment Checklist: Institutions p~~rior to signing an enrollment agreement enrolling an individual, institutions~~ shall require an institution representative and the prospective student to sign and date a pre-enrollment checklist~~form to be placed in the student file, which is either part of the enrollment contract or a pre-enrollment check list verifying that the student. The document must clearly indicate that it is the pre-enrollment checklist, include the full and correct name and address of the authorized location of the institution, and, if multiple pages, 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 institutional~~a~~ 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~~cost~~ of the program;
  - (f) has been informed of the estimated cost of books and any required equipment purchases such as a stenography machine, computer, specialized tools, or art supplies~~etc.~~;
  - (g) has been given a copy of the institutional~~a~~ cancellation and refund policy;
  - (h) understands what 'transferability of credits' means~~has executed a Transfer of Credit Disclosure Statement in compliance with T.C.A. § 49-7-144 and understands~~ the specific limitations ~~(if any)~~ should the institution have articulation agreements;-
  - (i) knows of their rights in a grievance situation including contacting the Tennessee Higher Education Commission by including on the form a statement in the following format~~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-

- ~~1.~~ ~~A statement: "I realize that any grievances not resolved on the institutional level may be forwarded to the Tennessee Higher Education Commission, Nashville, TN 37243-0830, (615) 741-5293."~~
- ~~(3)~~ (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://www.tn.gov/thec/topic/authorized-institutions-data>."
  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://www.tn.gov/thec/topic/authorized-institutions-data>"; or
  3. a copy of the institution's most recent Annual Performance Report created by Commission Staff and posted on the Commission's website.  
~~Also included, shall be documentation that the student received graduation-placement data exactly as presented to the Commission during the last reauthorization cycle in the following format:-~~
- ~~(a)~~ ~~A statement: "For the program entitled \_\_\_\_\_, I have been informed that the current withdrawal rate is \_\_%, or in the past 12 months \_\_\_ students enrolled in this program and \_\_\_ completed this program."~~
- ~~(b)~~ ~~A statement: "For the program entitled \_\_\_\_\_, I have been informed that for the students who graduated, the job placement rate is \_\_%, or in the past 12 months \_\_\_ were placed in their field of study out of \_\_\_ students who graduated from this program."~~
- ~~(k)~~ (k) has received and understands the institution's cash discount policy (applicable only to those institutions that have a cash discount policy).
- ~~(4)~~ ~~Liberal arts schools or professional schools that typically do not report vocational placement data may request a waiver of 1540-01-02-.13(3) above.~~
- ~~(52)~~ Enrollment Agreement: An Institutions enrolling an individual in a course or program shall require an institution representative and the prospective student to sign and date an enrollment ~~contract~~ 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 (not an application for admissions), 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:  
  
~~shall include but not be limited to:-~~

- 1.~~(a)~~ the full and correct name and ~~address of the location~~ authorized location of the institution;
  - 2.~~(b)~~ the name, address, and social security number ~~or unique student identification number~~ of the student;
  - 3.~~(c)~~ the date training is to begin and program length;
  - 4.~~(d)~~ if students have the option to attend part-time, full-time or part-time status of the student;
  - 5.~~(e)~~ the projected date of ~~graduation/completion-as-a full-time or part-time student~~;
  - 6.~~(f)~~ the program ~~title~~ name as approved by the Commission;
  - 7.~~(g)~~ the total cost of the program, including itemized ~~separate~~ costs for tuition and ~~fees~~ the approximate costs for other fees, ~~books and any required equipment purchases~~;
  - 8.~~(h)~~ cancellation and refund policy;
  - 9.~~(i)~~ ~~verification-verification that that the student has received an exact signed copy of the agreement~~ 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.~~(6)~~ ~~a Institutions shall contractually~~ guarantee ~~of total cost of tuition cost~~ for ~~twelve hundred (1200) contact~~ ~~contact~~ hours or ~~one calendar year~~ ~~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." ~~for full and part time student.~~
- (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), except 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.

~~(7) Programs less than 1200 clock (contact) hours must have a an enrollment contract with a set total tuition.~~

~~(8) Programs longer than 1200 clock (contact) hours that increase tuition cost after the initial 1200 hours or one year period, must provide counseling related to the tuition increase.~~

~~(9) Tuition increases that in the opinion of the Commission are excessive, unreasonable and exceeds initial disclosure to the student may result in an in depth audit of the institution at the school's expense to assure the Commission of financial stability.~~

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

#### 1540-01-02-.144 FINANCIAL STANDARDS.

~~(1) Institutions administering Title IV financial assistance programs will maintain all required guidelines and standards.~~

(21) The Commission and its staff may share information with the Tennessee Student Assistance Corporation and other state and federal agencies as appropriate.

(32) The institution shall maintain financial and business practices in line with common business procedures utilizing standard accounting practices.

(43) The institution shall maintain and be prepared to demonstrate at any time financial resources adequate to ~~meet~~ fund and maintain the following:

- (a) facility maintenance and overhead;
- (b) staff and faculty payroll;
- (c) books, supplies ~~and~~ or equipment utilized by students; and
- (d) general operating costs ~~including printing and advertising;~~

~~(5) Institutions shall be able to demonstrate annual financial planning through a budget. New degree granting program schools must establish financial planning that reflects at least a three year plan which includes anticipated income and expenses.~~

(64) As part of reauthorization, All authorized institutions must file ~~each year the most recent audited~~ financial statements for the most recently completed fiscal year, certified by an independent certified public accountant 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.-
- (da) ~~For multi-campus institutions, or for i~~As an alternative to subparagraphs (5)(a) through (c) of this rule, institutions owned by ~~one~~ the same parent company may submit, an audited consolidated corporate financial statement ~~shall be routinely required.-~~ The audited consolidated statement shall be prepared in accordance with the Generally Accepted Accounting Principles by an independent certified public accountant. The staffCommission Staff, the Committee, or the Commission, ~~however,~~ 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. ~~The audited income statement must be compiled for each institution, or group of institutions owned by the same company, authorized to operate under the Act;-~~

(5) 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.~~In the preparation of these statements, it should be noted that goodwill is not generally considered a current asset unless it is being amortized;-~~
- (c) Related parties must be disclosed~~;-~~, ~~including~~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. ~~Current financial statements on each site separately authorized under the Act must be filed annually.—~~
- (ee) Within ~~five~~three (3) years from ~~initial temporary~~initially receiving authorization, neither the ratio of ~~current fund~~total revenues to ~~current fund~~total expenditures nor the ratio of current assets to current liabilities, ~~both site specific and corporate~~of either the authorized location or the parent company, where applicable, shall be less than 1:1, without ~~e~~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.

~~(f) Institutions that have annual gross tuition revenue of \$100,000 or less may request a waiver of the audit contemplated by this section and provide the most recent financial information on forms provided by the Commission.~~

~~(7) The institution must submit an operating statement and balance sheet to the Commission within four months of the end of the institutional fiscal year. In addition, if a regular or certified audit is available, it should be submitted within four months of the end of the institutional fiscal year as well.~~

~~(876) When there are questions about the institution's financial stability, At any time, 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, a certified audit of the institution when there are questions about the institution's financial stability.~~

~~(87) 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-.155 INSTITUTIONAL AND STUDENT RECORDS.

~~(1) Records of enrollees, completers, and placements must be sufficient to provide annual auditable reports to the Commission from the master student registration list.~~

~~(21) 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 written student complaints that follow the institution grievance process, must be maintained, including a copy of the complaint, any investigatory documents, subsequent documents, and a statement of the matter's disposition.~~

~~(33) Student Financial records of the institution must be maintained and open for inspection and copying by DPSA Commission Staff in accordance with applicable confidentiality laws.~~

~~(44) 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."

~~Institutions administering financial aid programs must maintain a ledger and a record of financial aid administered which includes a chronological record of debits and credits which is understandable to the enrollee.~~

~~(5) Each institution must maintain a master student registration list consisting of at least the following information for any person who signs an enrollment agreement financially obligating that person or makes a down payment to attend, or both:~~

~~(a) registration date;~~

~~(b) name of student;~~

~~(c) address of student;~~

~~(d) telephone number;~~

~~(e) social security number;~~

~~(f) name of course or program; and~~

~~(g) current student status or date of dropout or completion, date of employment, employment status (i.e., employed, unemployed, disabled, or deceased), where employed, including the name, address, and telephone number of the employer.~~

~~(65) 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: the following documentation in each enrolled student file or folder and shall include but not be limited to:~~

~~(a) the executed transferability of credit disclosure statement required by T.C.A. § 49-7-144 and Rule .13(3) of these rules; an admissions form that provides basic information such as student name, social security number, address, telephone number, program or area of application, projected entrance date, etc., and information relevant for determination that the student meets the minimum entrance requirements of the institution, (see 1540-01-02-.12). This information may be incorporated into the enrollment contract;~~

~~(b) documentation evidencing the student's basis for admission as provided for in paragraph (6) of this rule (e.g., name and address of high school); if a high school diploma or the equivalent is required, for high school graduates or those with high school equivalency, the institution shall have on file an official copy of the high school transcript, or the equivalency certificate with scores which meet the state's minimum for passing; if an ability to benefit basis, the institution shall have on file official records of such; or if on an exception basis, documentation of such;~~

~~(c) the executed pre-enrollment checklist disclosure statement or checklist as given in these regulations (unless incorporated in the enrollment agreement);~~

~~(d) the executed a complete enrollment agreement as given in these regulations;~~

~~(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 a Tennessee license in the field for which the training is intended, then the student file shall contain verification of current licensure from the issuing Tennessee subject matter expert agency, such as a current screenshot from the agency's website.
- (d) 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.
- (e) 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.
- (f) 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.
- (e7) 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 ~~an up-to-date educational 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 ~~enrollee in a~~ form that permits easy and accurate review by the student, transfer ~~school~~institutions, potential employers, and ~~authorized~~other state or federal agencies. The transcript shall ~~be a permanent record of the student's progress and academic performance, which shall~~ include ~~at a minimum the, but not be limited to:~~

1. ~~full and~~ complete ~~name~~ 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 ~~or department of enrollment~~ name as approved by the Commission;
5. status of student, ~~(e.g. for example,~~ active; ~~withdrawal;~~ probation; ~~leave of absence;~~ or graduate ~~etc.);~~
6. ~~an~~ official date recorded for all student withdrawals and graduations;
7. beginning date or academic term with the year for each course attempted, ~~with an grade posted at the completion of the term or discrete contact hours for that course;~~
8. as applicable to the type of ~~school~~institution, credit ~~hours earned or contact~~ contact hours ~~completed~~ attempted and earned;
9. ~~actual~~ name of each course ~~and, if (subject) with any, the~~ code ~~course numbers as given listed in the~~ institutional 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.

- (f) ~~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.~~
- (79) In lieu of hard copy ~~ies of educational transcripts~~ transcripts and certificates, ~~an~~ the institution may maintain ~~the above information~~ 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~~ there is at least one complete updated 'backup' ~~copy in a separate system or at a different location~~ location. ~~Commission Staff must have complete. Commission staff and other authorized groups 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 and the institution can print out any or all transcripts~~ upon request.
- (8) ~~For institutions with well defined short term programs such as bartending and truck driving, with no separation of courses by subject content, an exact copy of the certificate of completion may be placed in the student file in lieu of an academic transcript.~~
- (9) ~~Institutions must maintain a written record 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.~~

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

#### 1540-01-02-.166 PERSONNEL AND INSTRUCTOR QUALIFICATIONS.

- (1) ~~Institutions must provide and maintain qualified faculty and staff in order to fulfill the mission of the institution and all obligations to the students.~~ (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.
- (22) 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 generally encompasses 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, but shall be included for reporting purposes on re-authorization forms annually.~~
- (43) Administrative personnel at an authorized institutions must be graduates of an accredited college or university or have sufficient background and training in the administrator's his/her 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.
- (54) 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. ~~Each institution must designate one person as the institutional director, who is responsible for the institution's program, the organization of classes, maintenance of the institutional facilities, maintenance of proper administrative records, signing documents pertaining to authorization and all other administrative matters related to authorization.~~
- (6b) Institutional owners or the controlling board must ensure that each authorized ~~location~~ site has an institutional director ~~on~~ at the ~~at location~~ 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 ~~the~~ Commission staff Commission Staff.
- (7c) The institutional director implicitly accepts knowledge of and responsibility for compliance with the Act and ~~these regulations~~ these rules including, but not limited to, advertising, records, contracts, required benchmarks, annual ~~deadline~~ due dates, and fee payments.
- (8d) The institutional director at an authorized institutions 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. \_\_\_\_\_ the total years of administration / or institutional management experience in postsecondary /higher education shall equal at least five (5) years.
- ~~(9) — Directors of authorized institutions must maintain on site a separate 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, agent permit documentation, and fire and safety reports.~~
- ~~(10) — If the institution employs a director of education, that director shall meet the same requirements as an instructor as specified in these rules and shall also have either one-year supervisory experience or a relevant post-bachelor's degree.~~
- (115) Instructors:
- (a) Instructional staff for all institutions must be selected at a minimum on the basis of ~~credentials demonstrably higher, on the basis of experience and training, than the level to be taught~~ these rules.
  - (b) Instructors in a trades ~~s~~ related or specific skill areas ~~s~~ must have documented proficiency and practical applied experience in that trade or skill.
  - (c) An instructor must hold the appropriate ~~certificate, license, or rating~~ license if the subject is a ~~trade vocation~~ requiring certificate, license, or rating licensure.
  - (d) An instructor must be qualified by education and experience/background ~~demonstrably higher than the level to be taught~~ and must meet at a minimum the

following qualifications ~~as minimum requirements~~:

1. ~~Minimum for a d~~ 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. ~~Minimum for 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. ~~Minimum for a b~~ 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. ~~Minimum for an a~~ 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. ~~Minimum for d~~ 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, at a minimum, earned masters degrees.

~~(12) Evidence of qualifiable education, experience, or training (including official transcripts) for each instructor must be maintained on-site at the location.~~

~~(136)~~ The Executive Director may approve a variance from the ~~se~~ 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 ~~personnel form~~ 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 the Commission staff~~ Commission Staff upon request.

~~(147)~~ 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.

~~(158)~~ Agents and Recruiters:

~~(a) Institutional agents as defined by the Act and these regulations must submit an application, on forms provided by the Commission have authorization and an agent permit and secure the appropriate bond prior to any solicitation. The~~

~~applicant must be accompanied by the following:-~~

- ~~1. — new applicants must forward recommendations by two reputable persons certifying that the applicant is of good character and reputation;-~~
- ~~2. — a check payable to the State Treasurer of Tennessee as required under these regulations;-~~
- ~~3. — a surety bond of \$5,000 per agent of an out-of-state institution or as specified in 1540-01-02-.07 of these rules; and-~~
- ~~4. — certification by the institutional director that the applicant will be directed to act in accordance with these regulations.-~~

~~(b) — Agent permits must be renewed every year. The expiration date of a permit is one year from the date of issue or termination of employment whichever occurs first.-~~

~~(c) — Agents must have separate permits to represent separate institutions unless they are commonly held. 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.-~~

~~(e) — Institutional directors, not marketing offices, are responsible for actions of agents.-~~

~~(fa) The agent shall be under the control of the institution, and the An -institution is responsible for any representations or misrepresentations, expressed ed or implied, made by the agent.~~

~~(gb) Any student solicited or enrolled by a non-~~licensed~~ 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 may 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-~~licensed~~ permitted agent.~~

~~(hc) An agent is prohibited from inappropriate activities in procuring enrollees including including, but not limited to, , -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.

(id) 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-.177 ~~CANCELLATION AND REFUND POLICY~~ CANCELLATION AND REFUND POLICY

(1) All authorized institutions must comply with the ~~laws and regulations~~ laws of the local, state, and federal government concerning cancellations and refunds and must revise all policies and practices if laws ~~and regulations~~ are revised.

~~(2) For purposes of this section, the period of enrollment is defined not to exceed one year.~~

~~(3)~~(2) Each authorized institution ~~institution authorized by the Commission to operate or to solicit students in Tennessee~~ shall have a fair and equitable refund policy which governs ~~credits or the repayments of unearned tuition, fees, and other~~ of institutional charges assessed a student when:

(a) ~~The student does not register or fails to~~ begin classes for the period of enrollment for which he or she was charged; or

(b) ~~The student~~ withdrawals, drops out, is expelled from the institution, or otherwise fails to complete the ~~program on or after his or her first day of class of the~~ period of enrollment for which he or she was charged.

~~(4)~~(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 institution to participate in a governmental student assistance program, such as Veterans Benefits. The institution's refund policy shall be deemed by the Commission to be fair and equitable if:

(4) The default refund policy is as follows:

~~(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:~~

- ~~1.~~(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 amounts-refundable fees paid ~~or~~ and, if the student has institutional loans, forgiveness of the amounts owed by the student ~~to be paid by or on behalf of 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;
- ~~2.~~(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 ~~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 refundable fees ~~amounts~~ paid ~~or~~ 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 ~~to be paid by or on behalf of the student for the period~~, less administrative fee of one hundred dollars (\$100.00);
- ~~3.~~(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 ~~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 refundable fees ~~amounts~~ paid ~~and, if the student has institutional loans, forgiveness of the loan amount in excess of the seventy-five percent (75%) the student owes the institution~~ ~~or to be paid by or on behalf of the student for the period~~, less administrative fee of one hundred dollars (\$100.00); or
- ~~4.~~(e) In addition to subparagraph (4)(b) of this rule, ~~if~~ after expiration of twenty-five percent (25%) ~~(25%)~~ of the period of enrollment for which the student ~~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 percent (100%) of the tuition and other ~~fees and other charges assessed~~ charged 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~~
- ~~(d) For students not affected by subparagraph (4a), the institution may propose a refund policy for approval by the Executive Director, if the policy can be demonstrated as a whole more favorable than subparagraph (b); or~~
- (ef) For a student who cannot complete one or more classes because the institution discontinued such a class ~~(es)~~ during a period of enrollment for which the student was charged, the institution shall refund ~~s~~ the sum of all refundable fees ~~amounts~~ paid and, if the student has institutional loans, forgive the amounts owed by the student ~~or to be paid by or on behalf of the student for such class(es)~~.

- (5) When computing refunds pursuant to the ~~policies contained in subparagraph 2-(b)(c)(d)~~ 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; or~~
  - (b) ~~The date the institution receives a written notice (including a signed drop form) of withdrawal from a student; or~~
  - (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 (LOA) 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 PROHIBITED ACTS:~~

- ~~(1) Grant or offer to grant or infer through advertising, promotions or other representations that educational credentials or credits may be obtained through any postsecondary institution, business, person or educational service unless so authorized in the state.~~
- ~~(2) No school seeking, holding or required to hold authorization under the Act may call itself a university or use university in its name, unless prior to authorization in Tennessee such an institution has been so approved by a regional accrediting body recognized by the U. S. Secretary of Education and the U. S. Department of Education.~~
- ~~(3) No entity may publicize, promote or imply an accreditation that is not recognized by the U. S. Department of Education.~~
- ~~(4) No school seeking, holding or required to hold authorization under the Act or these regulations may publicize, promote or imply an academic, vocational, professional or educational certification from any entity without the approval of the Commission.~~
- ~~(a) Certifications held out to students that imply a special status, licensing or credential beyond the authorized award by the institution whether offered within the school or by an independent entity, where such certifications are not recognized or required by the state and its laws or for employment purposes within the industry / profession, will require the approval of the Commission.~~
- ~~(5) For consumer disclosure and truth in advertising to all Tennessee citizens, an educational service, business or person must clearly identify the nature of the educational service offered and may not use broad language or phrases to imply that the service is a school, can award credits, degrees or other educational credentials.~~

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 49-7-2022.

1540-01-02-.199 FAIR CONSUMER PRACTICES AND ~~STUDENT~~ COMPLAINTS.

- (1) All institutions ~~authorized by the Commission~~ and their representatives shall ~~be required to operate~~ act in accordance with fair consumer practices to ensure current and prospective students that nothing is hidden and verbal and written representations by the ~~school-institution~~ are accurate, such that students can make ~~appropriate~~ informed decisions concerning their investment of time ~~and or~~ money.
- (2) Fair consumer practices means honesty, fairness, and disclosure to students in ~~the areas of: including, but not limited to,~~ recruitment, admissions, contractual agreements, student financial assistance, obligations to repay student loans, placement assistance, ~~and~~ 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 ~~schools-institutions,~~ and ~~also includes misrepresentation concerning competitor~~ schools. 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.
- ~~(a) Information regarding fair consumer practices shall be included in the institution's usual publications such as the catalog and school brochures and must always be provided by institutional recruiters and agents.~~
- ~~(b) Accredited institutions may apply accreditation standards of fair consumer practices.~~
- (53) Findings by ~~Commission staff~~ 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.~~or in the opinion of the Commission significant deviation from fair consumer practices may result in penal fines and/or conditional authorization or revocation of agent or institutional authorization.~~

- (64) ~~An institutions authorized under these rules~~ must report to ~~the Commission~~Commission Staff in writing within thirty (30) working days any unresolved written complaints ~~filed in a Tennessee court~~ about ~~their operation~~the institution of which ~~the institution is~~they are knowledgeable ~~(including media accounts of complaints). Such complaints shall be resolved or determined to be irresolvable by the institution within 30 working days of the receipt of the written complaint at the Commission offices. Complaints shall be considered as a factor in the decision when authorization to operate or continue in operation is sought.~~
- (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 as 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 (9) of this rule, Commission Staff may take appropriate action to investigate any complaint or suspected non-compliance 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-~~2013~~2011.

#### 1540-01-02-~~2020~~ REPRESENTATIONS, ADVERTISING, AND SOLICITATIONS.

(1) Institutions ~~authorized by the Tennessee Higher Education Commission~~ may use ~~the~~ reference having authorization in advertising, promotional material, and on letterhead stationary using the following language: "(name of ~~school~~ institution) is authorized for operation by the Tennessee Higher Education Commission." The entire statement must be used, ~~have~~ with the same size font, and ~~font~~ 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 ~~Tennessee Higher Education~~ Commission logo may not be used ~~by an institution in any school advertising, brochures, telecommunications or institutional material without written approval.~~

~~(3)~~ (4) Institutions authorized by the Commission that have ~~presence~~ a website on, advertise ~~through~~, or offer instruction via ~~the~~ internet, ~~world wide web or other electronic telecommunication means~~ must state on the ~~institution's home page~~ first 'page' (as registered with standard web/internet search engines) viewed by the consumer, or Tennessee specific webpage: "[name of ~~school~~ 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.

~~(a)~~ In the case of an internet site, within the required statement given above, The reference to the "Tennessee Higher Education Commission" must be an electronic link a hyperlink to [www.tn.gov/thec](http://www.tn.gov/thec). to the agency's web site at <[www.state.tn.us/thec](http://www.state.tn.us/thec)> or a picture/button link using a standardized approved Commission logo for school web sites.

~~(4)~~ (5) No statement shall be made that the institution or its courses of instruction have been accredited unless the accreditation is identified and ~~that of an appropriate~~ is an accreditor nationally-recognized ~~accrediting agency listed~~ by the ~~United States~~ U.S. Department of Education.

~~(5)~~ (6) No statement shall be made that the institution or its courses of instruction have been approved by a state or the federal government ~~approved~~ 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.

- (67) All advertisements ~~placed by the institution or its representatives~~ seeking prospective students must include and clearly indicate the full and correct name of the institution, ~~its address, and the~~ authorized location city, ~~and, if out-of-state, the authorized location state~~ where the institution is located.
- ~~(7) — Institutions that advertise in formats that will be in the public domain for long periods (such as the telephone book directory), where such advertising, if in noncompliance, cannot be rewritten or retracted may be fined in accordance with the Act for each day, week or month the advertisement is in active circulation. Such fines shall not exceed \$10,000.~~
- ~~(8) — Printed bulletins or other promotional information must emphasize training available rather than amount and kinds of aid available.~~
- (98) 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 or educational credentials.~~
- (109) Other than entry level salary data available on a Tennessee or federal government website, ~~No~~ dollar amount ~~or amounts~~ will be quoted in any advertisement as representative or indicative of the earning potential of graduates without prior approval by ~~Commission staff~~ Commission Staff.
- ~~(11) — Institutions authorized to offer specialized courses or subjects not available to other institutions shall not advertise such courses in such manner to diminish the value and scope of courses offered by other institutions.~~
- (120) Institutions ~~or representatives~~ shall not use images of any kind a photograph, cut-  
engraving, or illustration in bulletins, sales literature, or otherwise, in such a manner as to convey a false impression as to size, importance, or location of the institution, its equipment, or its and facilities ~~associated with that institution~~.
- ~~(13) — Institutions or representatives shall not use endorsements, commendations, or recommendations by students in favor of an institution except with the consent of the writer and without any offer of financial compensation, and such material shall be kept on file and made a permanent record for the institution, and such endorsements shall bear the actual name or professional name of the student.~~
- (141) Institutions or representatives shall not make deceptive statements concerning other ~~institutional activities~~ institutions when in attempting to enroll students.
- ~~(15) — Every display type newspaper advertisement, or other advertisement placed by the institution or its representatives, through direct mail, radio, television, or directories seeking prospective students, must clearly indicate that training is being offered, and shall not, either by actual statement, omission, or intimation, imply that prospective employees are being sought.~~
- ~~(16) — Classified advertising seeking prospective students must appear under "instruction," "education," "training," or a similarly titled classification and shall not be published under any "help wanted" or "employment" classification. (See special school section 1540-01-02-.08(19) for truck driving)~~

- ~~(17) No advertisements of any type shall use the word "wanted," "help wanted," or the word "trainee," either in the headline or the body of the advertisement, nor shall any advertisement indicate in any manner that the institution has or knows of jobs or employment of any nature available to prospective students; only "placement assistance," if offered, may be advertised.~~
- ~~(18) No statement or representation shall be made that students will be guaranteed employment while enrolled in the institution or that employment will be guaranteed for students after graduation, nor shall any institution or representative thereof falsely represent opportunities for employment upon completion of any course of study.~~
- (19) 2) Other than referencing the most recent rates calculated by Commission Staff, No school/institution shall use job placement percentages or statistics in advertisements or recruitment materials except by written permission of the Commission/Commission Staff.
- ~~(20) Should a placement service be advertised, adequate records shall be maintained by those institutions advertising such placement service which will reflect employment data. However, no institution shall advertise as an employment agency under the same or a confusingly similar name or at the same location of the school. No representative shall solicit students for an institution through an employment agency.~~
- ~~(21) The 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 the Executive Director of the Commission cannot be furnished, a retraction of such advertising claims published in the same manner as the claims themselves, must be published by the institution and continuation of such advertising shall constitute cause for suspension or revocation of its certificate of authorization.~~
- (22) 13) If student 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.
- (23) 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).
- (24) 15) No statement shall be made by an institution or its representatives that the programs and/or courses or tests are transferable to another institution without a current documentation by an authorized official of the receiving institution articulation agreement or transfer of credit agreement.
- ~~(25) Claims by institutions in advertisements must be substantiated in Commission files prior to such claim.~~
- (26) 16) Claims must not be vague. For example, "award winning" institution should include the full name of the award in advertisement/advertisement, and 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-~~24~~1 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.~~At~~

(b) An institution will receive temporary authorization~~\_may be issued following:~~

- ~~1. staff review of the completed application for authorization based on these rules;~~
- ~~2. site visitation of the proposed institutional facilities as deemed necessary and feasible by the Commission staff;~~
- ~~3. recommendation from the Committee on Postsecondary Education Institutions; and;~~
- ~~4. after~~ favorable Commission action.

(b) ~~Institutions satisfactorily, as deemed by the Commission, completing the pre-operation requirements will be notified by letter of temporary authorization. Temporary authorization must be maintained for at least twenty-four (24) months prior to eligibility for regular authorization.~~on the basis of public Commission action.

~~(c) Institutions accredited through an accrediting agency recognized by the United States Department of Education which have satisfactorily completed the specified time as an institution with temporary authorization will be considered for an authorization certificate for a period of six years. The Commission may select a shorter period, and in no case, is such school exempt from the annual reporting requirements given in these rules. (See Annual Renewal for Authorization).~~

~~(d) The temporary authorization allows ninety days for initiation of actual operation and enrollment of students and unless satisfactory reasons are forwarded by letter from the applicant for not beginning operation and enrolling students, the temporary authorization may be withdrawn. All new institutions must submit a status report ninety days after receipt of temporary authorization and submit annual reports on the annual reporting schedule which requires annual fees and reports due October 15 each year.~~

(2) Regular Authorization:

~~(a) Institutions that complete the mandatory period of temporary authorization may cancel all bonds required at initial authorization.~~

~~(b) Institutions accredited through an accrediting agency recognized by the United~~

~~States Department of Education completing temporary authorization will be considered for an authorization certificate for each site for a period of up to six years. The Commission, when possible will tie the authorization period to the accrediting body's granting of accreditation / reaffirmation cycle.~~

~~1. Such accredited institutions eligible for regular authorization will be allowed to submit for annual reauthorization each October 15, the most recent annual reporting documents submitted to the accrediting agency along with the minimum forms required by the Commission.~~

~~(c)a Schools with no accreditation (or schools with an affiliation under an accrediting 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-agency not recognized by the United States Department of Education) must be reauthorized annually on forms supplied by the Commission staff.~~

~~(d) Nothing in this section shall be construed to absolve institutions of annual fee requirements, response to complaints, site visits or any Commission request for additional information or materials.~~

(3) Conditional Authorization:

(a) ~~A~~ Conditional authorization is ~~authorization to operate~~ is the issuance of authorization to operate, but with additional conditions, such as e.g., reporting requirements, ~~on the meeting of certain~~ performance standard requirements, securing new or additional bonds, ~~authorization to operate for~~ 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. Such ~~e~~ Conditional authorization may be issued when deemed necessary to protect the public interest.

~~(b) As an alternative to revocation of authorization (c.f. TCA §49-7-2010 as amended), by making conditional its authorization to operate, the Executive Director may suspend or cause to cease any part of institutional activity such as enrolling additional students, advertising, or conducting specific classes or programs. Such cessation shall remain in effect until conditions precipitating the suspension of the activity are corrected with preventive measures in place and Commission staff have completed all related reviews and investigations.~~

~~(c) At the discretion of the Executive Director, the institution may be afforded the opportunity to "show cause" why a conditional authorization should not be imposed.~~

~~(d)b~~ An institution may voluntarily rrequest conditional authorization, including ~~including, but not limited to,~~ suspension of the operation, rather than expose the institution to adverse action ~~or loss of authorization~~, for situations such as unexpected loss of lease, and training site; extended travel inactivity, or reorganization sabbatical. ~~Voluntary suspension and the time period involved must be approved by Commission staff.~~

(ec) 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 ~~school~~institution in the state.

(b) Possible Grounds for immediate revocation of authorization to operate shall include but are not be limited to:

1. loss of right to use the authorized instructional sitelocation without immediate notification to the Commission;
2. instances where a principal party, ~~or owner or administrator~~ has been or is involved with ~~the institution who has ever been associated with~~ a postsecondary educational institution that ceased or ceases operation ~~with~~ resulting in a loss of time or money for enrollees, ~~or that~~ had or has its institutional authorization to operate in a state revoked or had or has a felony conviction involving moral turpitude, fraud or a capital crime;
3. a pattern of deceptive practices ~~which include: hiding of any institutional records or documents; manipulation, alteration or falsification of materials required under the Act and these regulations which impugns administrative capability, fair consumer practices or operational standards;~~
4. failure to correct any situation that resulted in ~~a show cause or~~ conditional authorization within a reasonable time period to be determined by the Executive Director;
5. disregard for any specific directive issued by the Commission, ~~or the~~ Executive Director, or Commission Staff;
6. failure to pay assessed~~required fees, penalties or~~ fines; and
7. closing an institution without proper notification to the Commission.

~~8. ——— knowledgeable or demonstrated pattern of deceptive solicitation.~~

(c) Revocation of authorization shall not relieve ~~a school~~an institution of complete compliance with the requirements in ~~these regulations~~these rules applicable to ~~an institution~~school closing ~~or ceasing operation, including~~including, but not limited to, but not limited to refunds to students, arranging instructional teach-outs, 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-~~2222~~ 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 ~~under this Part~~ of five hundred

dollars (\$500) per day per violation ~~or~~; revoke or make conditional; ~~deny or change~~ the authorization of an institution or approval of an agent permit ~~status of any permit or certificate of authorization~~ under the process as given in subparagraph 1540-01-02.02(2)(e) of these rules for reasons including, but not limited to ~~for any one or combination of the following causes:~~

- (a) disregard of provisions in of the Act and/or ~~these regulations~~ these rules;
- (b) willful violation of any commitment made in an application for ~~a certificate of authorization or reauthorization~~;
- (c) presenting to the general public or students or prospective students information that violates Fair Consumer Practices (~~1540-01-02-19~~) as outlined in ~~these regulations~~ these rules;
- (d) advertising, recruiting, or operating a group of classes or a program that has not been ~~authorized~~ 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 ~~or to retain a sufficient and qualified instructional and administrative staff~~;
- (h) ~~conducting instruction~~ operating a postsecondary educational institution at a site location that ~~which~~ has not been authorized by the Commission;
- (i) failure to correct findings resulting from a site visit or audit ~~an on-site inspection or review of institutional materials~~;
- (j) ~~demonstrable~~ 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 ~~sufficient to 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 regulations~~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 ~~Tennessee~~ Uniform Administrative Procedures Act (~~T.C.A. §§ 4-5-101 – §§ 4-5-311~~).

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

1540-01-02-~~233~~ -INSTITUTIONAL CLOSURE.

- (1) When an authorized postsecondary educational institution proposes to discontinue its operation, such institution shall notify ~~the Commission staff~~Commission Staff within seventy-two (72) ~~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. ~~and shall submit to Commission staff within 10 days (or other deadline established by Commission staff) a plan to fulfill all obligations given below. Such plan shall.~~ The list may include but not be limited to:
- (a) aAnticipated date to terminate teaching activity;
- (b) eEnding 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, ~~ocial security number,~~ address, ~~and~~ phone number, ~~program of enrollment~~ enrolled in, and estimated graduation completion dates;
- (d) ~~t~~The status of all current refunds due or the amount of ~~rent refunds due (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) ~~d~~Disposition and servicing of all student records as required by T.C.A. §49-7-2016;
  - (g) ~~a~~A request for conditional authorization to operate where required;
  - (h) ~~updated statistical data; Completion of obligations as designated by Commission staff by established deadlines.~~
  - (i) ~~official transcripts and certificates; and Submission of any information or materials related to the closure requested by staff.~~
  - (j) ~~d~~Demonstration that current educational obligations by the institution will be met on behalf of the presently enrolled students.
- (23) ~~The~~ ~~An~~ institution ~~which proposes to~~ ~~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.
- (34) Should the institution fail to make arrangements satisfactory to the ~~e~~Executive ~~d~~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 ~~as stipulated in T.C.A. 49-7-2017.~~
- (45) Institutions that close without proper notification to the Commission or that fail to comply with closure obligations given in this ~~rule section (1540-01-02-.23)~~ 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 individual(s) directly involved, including, but not limited to, the director, owner(s), and/or the board chair.
- (56) Student Completion of Education ("Teachouts"):
- (a) The ~~e~~Executive ~~d~~Director may approve other ~~authorized or exempt institutions which are authorized under T.C.A. 49-7-2001 et seq. 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. ~~exist or be provided 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 ~~his/her~~ ~~the~~ program at no ~~additional~~ cost ~~in excess of that~~ ~~than~~ 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 ~~graduate~~ ~~complete~~.
  - (b) If the closed or closing institution fails to provide an acceptable plan to the executive director, ~~the Commission staff~~ 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.

~~(d) The teachout plan requirement is intended to supplement, not supplant, the provisions concerning the disposition of records when an institution closes, as indicated in T.C.A. 49-7-2016.~~

~~(6) Disposition of Records:~~

~~(a) Any institution ceasing operation must secure student educational transcripts by an arrangement with an authorized institution or make them available to the Commission.~~

~~(b) When financial aid and academic transcripts from closed institutions are prepared for delivery to the Tennessee Student Assistance Corporation and the Tennessee Higher Education Commission, such academic and financial records, each, shall be sorted and separated by year, in alphabetical order, and physically contained in boxes 15 inches long, 12 inches wide, 10 inches high with tops and with handles, consistent with State of Tennessee Archives regulations.~~

~~(c) Financial aid transcripts must be organized, marked and boxed separately from academic transcripts.~~

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

1540-01-02-.244 Filing Methods and Requirements.

(1) Unless otherwise provided in an application, 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).

~~TUITION GUARANTEE FUND (TGF).~~

~~(1) 'Tuition guaranty fund' or 'TGF' or 'fund' means the tuition guaranty fund created by TCA 49-7-2018.~~

~~(2) No institution organized as an in-state private postsecondary vocational education institution covered under the Act is exempt from the Tuition Guaranty Fund as described in TCA 49-7-2018.~~

Authority: T.C.A. §§ 49-7-2005 ~~and 49-7-2018.~~

1540-01-02-.255 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) The Commission is authorized to adjust fees annually hereafter based on the intent to collect revenues sufficient to cover the cost of this regulatory function (e.g. travel, employee costs, legal costs, expert fees).~~

(23) 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 ~~The fees to be collected by the Commission hereunder shall accompany an applications 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~~ and other services schedule:

~~(a) Late Renewal Fee (in addition to base renewal fee)..... \$1,000~~

~~(b) Renewal Extension Fee (in addition to base renewal fee)..... \$500~~

~~(ea) Initial New School Authorization Application ..... \$3,000~~

(b) New Programs Application..... \$500

~~..... Each Proposed Program ..... \$500~~

~~(d) Associate Degree Granting Institutions (in addition to base initial ..... \$1000~~

~~..... application and program fee)~~

~~(e) Bachelor Degree Granting Institutions (in addition to base initial ..... \$2,000~~

~~..... application and program fee)~~

~~(f) Masters Degree Granting Institutions (in addition to base initial ..... \$3,000~~

~~..... application and program fee)~~

~~(g) Doctoral Degree Granting Institutions (in addition to base initial ..... \$4,000~~

~~..... application and program fee)~~

~~(ch) Authority for Unaccredited Institutions to Grant Degrees — Unaccredited Institutions (in addition to~~

~~..... \$1000~~

~~(paid in addition to base initial application, program and degree level~~

~~the New Program Application fee fees)~~

~~(i) New Programs — Authorized Institutions ..... \$500~~

~~(dj) Degree Credential Level Elevation for — Authorized Institutions ..... \$21,000~~

~~(paid in addition to the New Program Application fee)~~

(ek)	Agent <u>Permit Application Fee In-State</u> — Initial <u>Application</u> .....	<del>\$\$\$</del> 500
(fl)	<u>Agent Permit Application Agent Fee In-State</u> — Renewal <u>Application</u> .....	\$250
(m)	<del>Agent Fee Out-of-State</del> — Initial <u>Application</u> .....	<del>\$600</del>
(n)	<del>Agent Fee Out-of-State</del> — Renewal <u>Application</u> .....	<del>\$300</del>
(eg)	Institution <u>al-Name Change Application</u> .....	\$500
(hp)	Change of <u>Address Location Application</u> .....	\$500
(ej)	<del>Non-compliance</del> Fines ( <u>assesses at a maximum of</u> per day, per violation).....	\$500
(j)	<u>Exemption Determination Application</u> .....	\$100
(k)	<u>Closed Institution Transcript Request</u> .....	\$10
(l)	<u>Convenience Charge for Electronic Payments</u> .....	amount charged by vendor
(4)	<del>Reauthorization fees for in-state institutions are based upon an institution's annual gross tuition revenue collected during the previous fiscal year (July 1 to June 30). Reauthorization fees for out of state institutions are based on an institution's annual gross tuition revenue collected from Tennessee students during the previous fiscal year (July 1 to June 30). In each instance the reauthorization fee shall equal point seventy five percent (.75%) of the annual gross tuition collected with a minimum fee of five hundred dollars (\$500) and maximum fee of twenty five thousand dollars (\$25,000).</del>	

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.

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: T.C.A. §§ 49-7-2005, 49-7-2022 and 49-7-2023.

1540-01-10-.02 DEFINITIONS

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

- (6) "Committee" means the Committee on Postsecondary Educational Institutions.
- (7) "Degree-granting postsecondary educational institution" includes institutions offering education or training above the high school level and where the institution awards degrees, such as associate, bachelors, masters, specialist, or doctoral degrees.
- (8) "Division of Postsecondary State Authorization" or "DPSA" means the division within the Tennessee Higher Education Commission tasked with overseeing the implementation and enforcement of the Act and these rules.
- (9) "Federal student financial aid programs" means any of the various loans or grants offered to students, parents, or institutions through Title IV of the Higher Education Opportunity Act, as amended.
- (10) "License" or "Licensure" includes similar terms, such as registration and certification, and means a designation from a subject matter expert state agency, board, or commission indicating that the recipient has met certain requirements for obtaining the designation, for example, a licensed massage therapist or educator.
- (11) "Location" means an address that is zoned for commercial purposes for use as a postsecondary educational institution.
- (12) "Optional expedited authorization" or "OEA" means the optional expedited authorization available pursuant to [T.C.A. § 49-7-2022](#) 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: [T.C.A. §§ 49-7-2005, 49-7-2022 and 49-7-2023](#).

#### 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 Tennessee;
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) DPSA assigned program code;
- (iii) credential awarded;
- (iv) credit hours or contact hours to be awarded;
- (v) length of time expected to complete the program;
- (vi) cost of program tuition;
- (vii) cost of other fees;
- (viii) program status;
- (ix) a Classification of Instructional Programs (CIP) code;
- (x) whether programmatic accreditation is required for the program and the name of the accreditor that has reviewed and accredited the program; and

6. the website address to the gainful employment data for **gainful employment programs**. The address should provide a reasonable person easy access to this information;

7. 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;

8. 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;

9. copies of all executed articulation and transfer of credit agreements with other institutions operating in Tennessee;

10. 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

11. 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: T.C.A. §§ 49-7-2005, 49-7-2022 and 49-7-2023.

#### 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: T.C.A. §§ 49-7-2005, 49-7-2022 and 49-7-2023.

#### 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 T.C.A. § 49-7-2022(q) 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: T.C.A. §§ 49-7-2005, 49-7-2022 and 49-7-2023.

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

- (1) OEA may be revoked for just cause. Revocation can occur as a result of:

  - (a) a vote of the Commission on its own motion or on the recommendation of the Committee or the Commission Staff; or
  - (b) a determination of the Executive Director pursuant to Rule 1540-01-02-.02(e).
- (2) Just cause includes activities where the institution acted contrary to the public interest, exhibits questionable financial strength, or is not operating educational programs with acceptable outcomes and includes, but is not limited to:

  - (a) Loss or failure to meet any of the listed criteria for eligibility in Rule .03(1) of these rules;
  - (b) Failure to fulfill the requirements in Rule .03 of these rules;
  - (c) A finding resulting from a signed student complaint that:

1. the institution did not follow its policies as presented to the student; or
  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 may 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.
  - (4) Notwithstanding paragraphs (1) through (3) of this rule, no immediate action should be taken to revoke an institution's OEA when the institution's accreditor is removed from the U.S. Department of Education's list of recognized accreditors. The Executive Director shall set a time period in which institutions may continue to operate under OEA, assuming all other OEA requirements are met. The time period should coincide with the provisional time period set by the U.S. Department of Education for affected institutions to seek a new accreditor.

Authority: T.C.A. §§ 49-7-2005, 49-7-2022 and 49-7-2023.

#### 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 follows:

(a) Complaints shall be signed and submitted through hand delivery, mail, or electronic mail as provided for in Rule .08 of these rules.

(b) Any named institution will receive a copy of the complaint and be provided an opportunity to respond to all allegations contained in the complaint.

(c) Any named institution shall provide all information requested by Commission Staff as part of the investigation.

(d) As part of the investigation process, Commission Staff may work with the complainant and the named institution to effectuate a settlement.

(e) If there are no findings, the complaint will be closed and the written determination shall include a date by which an aggrieved party may submit a request for further review by the Executive Director as provided for in Rule 1540-01-02-.02(2)(b). Such date shall not be earlier than ten (10) business days after the date of the written determinations. If no request for review is received, the complaint will be closed.

(f) If there are findings and proposed recommendations, the following process will be used:

1. Commission Staff shall provide in the written determinations and proposed recommendations a date by which either party may respond to the findings or recommendations. Such date shall not be earlier than ten (10) business days after the date of the written determinations.

2. Following review of the responses, if any, Commission Staff may:

(i) determine that the complaint is closed by providing written notice to the parties. The written notice shall include a date by which an aggrieved party may submit a request for further review by the Executive Director as provided for in Rule 1540-01-02-.02(2)(b). Such date shall not be earlier than ten (10) business days after the date of the written determinations; or

(ii) recommend that the Executive Director take some action that is within the scope of the proposed recommendations. Any decision of the Executive Director to take action will be provided to the parties by letter and shall include a date by which an aggrieved party may submit a request for further review by the Executive Director as provided for in Rule 1540-01-02-.02(2)(b). Such date shall not be earlier than ten (10) business days after the date of the written determinations.

(g) Any request for review shall be in writing, signed, list each instance where Commission Staff erred, and provide a detailed explanation of each alleged error with references to specific statutes or rules. Requests for review shall be received through hand delivery, mail, electronic mail or facsimile. A request may be denied if it is not received in a timely manner as set forth in subparagraph (f).

Authority: T.C.A. §§ 49-7-2005, 49-7-2022 and 49-7-2023.

#### 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 in an application, 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: T.C.A. §§ 49-7-2005, 49-7-2022 and 49-7-2023.

#### 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: T.C.A. §§ 49-7-2005, 49-7-2022 and 49-7-2023.

**In The Matter Of:**  
*Tennessee Higher Education Commission*  
*Division of Postsecondary State Authorization*

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*Transcript of Rulemaking Hearing*  
*October 6, 2016*

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**Transcript of Rulemaking Hearing - October 6, 2016**

BEFORE THE TENNESSEE HIGHER EDUCATION COMMISSION  
DIVISION OF POSTSECONDARY STATE AUTHORIZATION

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TRANSCRIPT OF RULEMAKING HEARING  
Thursday, October 6, 2016

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Reported By:  
Christina A. Meza, LCR, RPR, CCR

**Nashville Court Reporters 615.885.5798**  
**Christina A. Meza, LCR, RPR, CCR**

**Transcript of Rulemaking Hearing - October 6, 2016**

1 APPEARANCES:

2 For THEC: Dr. Stephanie Bellard Chase  
3 Ms. Julie M. Woodruff  
4 Ms. Latonya Todd  
5 Ms. Shauna Jennings  
6 Ms. Teresa Warren  
7 Mr. Mike Sloan

8 For National College: Mr. Chuck Steenburgh

9 For DeVry University: Mr. Peter Powell

10 For Univ. of Phoenix: Mr. Jeremy Nagoshiner

11 For Brightwood College: Ms. Haley B. Johnson

12 For Remington College: Mr. James Saulsbury

13 Interfaith Education Ctr.: Ms. Andrea Stilwell

14 Nashville Software School: Ms. Laura Buchanan

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**Transcript of Rulemaking Hearing - October 6, 2016**

1 (The aforementioned  
2 rulemaking hearing came on to be heard on Thursday,  
3 October 6, 2016, beginning at 1:02 P.M., before  
4 Ms. Julie M. Woodruff, Director of Postsecondary State  
5 Authorization and Lead Attorney, when the following  
6 proceedings were had, to-wit:)

7 MS. WOODRUFF: Good afternoon,  
8 everyone. We'll go ahead and get started.

9 Thank you-all for coming this  
10 afternoon. I'm Julie Woodruff, and I will conduct  
11 today's hearing. I will also note for the record that  
12 Dr. Stephanie Bellard Chase, the associate executive  
13 director of the division of postsecondary state  
14 authorization is with me as well. We have several  
15 members of commission staff here, and so I would like  
16 for them to introduce themselves.

17 Latonya, can you start?

18 MS. TODD: Hi, everyone. I'm Latonya  
19 Todd.

20 MS. WARREN: Teresa Warren.

21 MS. JENNINGS: Shauna Jennings.

22 MS. BUCHANAN: Laura Buchanan.

23 MS. WOODRUFF: Do you-all want to  
24 introduce yourself?

25 MR. SLOAN: Scott Sloan, general

**Transcript of Rulemaking Hearing - October 6, 2016**

1 counsel.

2 MS. TYLER: Crystal Tyler, Goodwill  
3 Industries of Middle Tennessee.

4 MR. BENTON: Grant Benton, Goodwill  
5 Industries of Middle Tennessee.

6 (Not audible.)

7 MS. WOODRUFF: My intention was just  
8 the commission staff. I apologize because I kind of  
9 went that way thinking that Scott and some of our other  
10 folks might want to, but mainly let me just point out  
11 Latonya Todd is specifically division of postsecondary  
12 state authorization, Teresa Warren and Shauna Jennings,  
13 and I think that's all from DPSA, and then we have some  
14 folks also from other areas of Tennessee Higher  
15 Education Commission. Okay.

16 so let's see. Before we get too far  
17 into the substance of the rules. Let me just remind  
18 everyone that the rest rooms are down the center hall  
19 out this door, just past the elevators. Please feel  
20 free to come and go as necessary but please be  
21 respectful of the speakers.

22 we have a sign-up sheet at the table  
23 right here. If you wish to speak and have not signed  
24 up, please do so.

25 Also we have a court reporter with us

1 today. If you present, please provide her with your  
2 card at the conclusion of the hearing so that she  
3 transcribes your name and affiliation correctly.

4 Also please try to speak clearly and  
5 into the microphones. I've reserved a couple seats up  
6 here for speakers. If you come to the table, that way  
7 you can use the microphone.

8 Okay. So now we'll talk a little bit  
9 about the substance of the rulemaking.

10 Public Chapter 868, referred to as the  
11 Higher Education Authorization Act of 2016, HEAA,  
12 passed the general assembly earlier this year. The  
13 bill was effective for rulemaking purposes when signed  
14 on April 19th, 2016; however, the substantive  
15 provisions of the bill were effective October 1st.

16 The bill updated the Postsecondary  
17 Authorization Act of 1974 by adding an optional  
18 expedited authorization, OEA, alternative degree  
19 granting accredited institutions, and revised statutes  
20 that were applicable to all institutions.

21 Following the passage of the HEAA,  
22 THEC determined there was not adequate time to complete  
23 the traditional rulemaking process set forth in the  
24 Uniform Administrative Procedures Act, and set out on a  
25 two-track path, one being promulgated emergency rules

**Transcript of Rulemaking Hearing - October 6, 2016**

1 and the other being a rulemaking hearing process.

2 On May 5th and 6th of 2016, we held  
3 workshops with authorized institutions and other  
4 interested parties to receive feedback before drafting  
5 the emergency rules.

6 Given the expansiveness of the HEAA,  
7 THEC proposed a leading rule Chapter 1540-01-02 in its  
8 entirety promulgating new rules for this rule chapter  
9 and promulgating a new rule chapter to implement OEA.

10 On July 20th, 2016, the commission  
11 approved a set of rule revisions as emergency rules and  
12 as rulemaking hearing rules to send to the attorney  
13 general's office for review and to move forward with  
14 the rulemaking hearing process. Thereafter, the rules  
15 were approved by the attorney general and were filed  
16 with the secretary of state on August 5th, 2016, both  
17 as emergency rules and as a notice of rulemaking  
18 hearing. The emergency rules were effective on  
19 October 3rd, 2016.

20 THEC emailed all authorized  
21 institutions and known interested parties the notice of  
22 rulemaking hearing on September 7th, 2016. Pursuant to  
23 this notice, any written comments are due today and  
24 should be directed to my attention.

25 If you have comments you wish to file,

**Transcript of Rulemaking Hearing - October 6, 2016**

7

1 you can either bring them to us after this hearing, you  
2 can give them to Teresa Warren, or you can go up on the  
3 19th floor and file them with our office.

4 Ms. Stevenson will stamp them and enter them into our  
5 system.

6                   Following this meeting, we will  
7 compile and review -- I'm sorry. Let me back up.

8                   The notice also provided for today's  
9 hearing to be in this room starting at 1:00 P.M.,  
10 Central. Following this meeting, we will compile and  
11 review all comments. Thereafter, commission staff will  
12 provide recommendations to the committee on  
13 postsecondary educational institutions for its  
14 consideration at its November 2nd, 2016, meeting. I  
15 will present the recommendations of the committee to  
16 the commission. The intention is at the commission  
17 meeting scheduled for November 16, 2016.

18                   As I noted earlier, the revisions  
19 contained in the notice are extensive. Although the  
20 current version of Rule Chapter 1540-01-02 is dated  
21 December 2014, with one exception, the rules are  
22 identical to the rules dated June 2000.

23                   Additionally, the HEAA directed our  
24 executive director, Mr. Mike Krause, to reexamine the  
25 regulatory function of THEC and its structure.

1 Specifically, he was directed to take into  
2 consideration the efficiency, adequacy, and overall  
3 effectiveness of the regulatory function. Thus, Rule  
4 Chapter 1540-01-02 was rewritten. Through the  
5 revisions, we hope to clarify requirements, improve the  
6 organization, conform to the statutory language and  
7 current practices and fill gaps.

8 I'll list just a few examples in Rule  
9 Chapter 1540-01-02. Revisions were made to Rule .13 to  
10 clarify the order in which institutions must present  
11 students with pre-enrollment checklists,  
12 transferability of credit disclosure statement, and  
13 enrollment agreement. Previously, exemptions appeared  
14 in two rules. Now under Rule .05 all exemptions appear  
15 in one place.

16 we revised the rule language related  
17 to bonds to ensure conformity with the statute and to  
18 improve the organization of the rules by moving the  
19 language to a stand-alone section.

20 we revised the section in Rule .07  
21 related to school personnel applications to align with  
22 our current filing and record retention requirements.

23 Lastly, we added language to fill the  
24 gap in our rules related to the refund of fees.

25 As to the new rule chapter, we

1 recognize the many different requirements for  
2 institutions with traditional authorization status and  
3 those with optional expedited authorization status. We  
4 decided it was best to create a new rule chapter  
5 specifically applicable to OEA institutions. This  
6 chapter is numbered 1540-01-10.

7           The rules unique to OEA institutions  
8 are definitions, eligibility and application  
9 requirements, required notification to commission  
10 staff, denial of OEA status, revocation of OEA status,  
11 complaints, filing methods and requirements, and fees.  
12 Every effort was made to track the language of the  
13 HEAA, only providing guidance when necessary to ensure  
14 full implementation of the OEA statutory provisions.

15           Examples of additional guidance are in  
16 Rule .02. It provides definitions to help the reader  
17 better understand terminology used in the statutes and  
18 rules.

19           Rule .03. Language was included  
20 explaining the statutory requirements including, for  
21 example, what is a, quote, "Clearly articulated and  
22 comprehensive process for the resolution of student  
23 complaints," end quote. The documentation required to  
24 demonstrate that the institution is operating lawfully  
25 in the state and is eligible for Title IV, federal

1 student financial aid programs.

2 Rule .04. Language was included to  
3 require the filing of a new program notification form  
4 so that program codes can be assigned and that subject  
5 matter expert agency approval is obtained, if required.

6 Rule .05. The rules allow for the  
7 commission to appoint an administrative law judge from  
8 the secretary of state's office to consider a denial  
9 determination.

10 Rule .06. This rule details the  
11 revocation process and defines just cause with  
12 examples.

13 Rule .07. This rule sets forth the  
14 parameters of a complaint investigation, specifically  
15 whether the institution followed its own policies and  
16 whether the institution failed to disclose a fact or  
17 made a representation that affected the student's  
18 ability to make decisions concerning the student's  
19 investment of time and money.

20 Rule .08. This rule is administrative  
21 and provides application dates, filing requirements,  
22 and terms of deferral.

23 Rule .09. This rule establishes the  
24 flat annual fee for OEA institutions.

25 So at this point I would ask, is there

1 anybody else who hasn't signed in that would like to  
2 make comments?

3 (No response.)

4 MS. WOODRUFF: Okay. So we have -- we  
5 have seven -- seven folks that have signed. With that,  
6 we will go ahead and begin the comments. At this point  
7 let's limit comments to about 10 minutes, and then  
8 we'll see how much time we have left after that point.

9 With those comments, I believe we're  
10 ready to begin with Jeremy Nagoshiner from the  
11 University of Phoenix.

12 MR. NAGOSHINER: I will be really  
13 brief. It seems like not that long ago we were sitting  
14 in here talking about draft rules, and here we have the  
15 new rules in front of us. I'm here on behalf of Apollo  
16 Group/University of Phoenix, and we don't have  
17 necessarily comments to put on the record, but we  
18 thought it was important to put on the record that we  
19 appreciate THEC leadership, THEC staff and their  
20 willingness to work with us throughout this process  
21 from start to finish.

22 We think the commission has come a  
23 long way to address concerns that various institutions  
24 have had over the years. We think this will go a long  
25 way to streamline the process and make it better for

1 schools like us and ultimately easier for students as  
2 well.

3 So with that being said, I'll yield my  
4 nine minutes remaining to somebody else, but thank you  
5 to THEC.

6 MS. WOODRUFF: Thank you very much.

7 So next I have Peter -- I can't read  
8 your last name. I know I should know it. DeVry  
9 University.

10 MR. POWELL: Powell.

11 MS. WOODRUFF: Campus director.

12 MR. POWELL: I'll challenge for  
13 shortness here with Jeremy as well. I have more of a  
14 question than a comment that we have. In looking at  
15 the new OEA, what would happen if OEA is revoked at any  
16 time and the school has to reapply under standard  
17 school authorization? would new program applications  
18 and fees be required at that time?

19 MS. WOODRUFF: They would be required  
20 at the time of application.

21 MR. POWELL: So if you have OEA and  
22 it's revoked at any time, would you -- to get something  
23 reapproved, would you have to go back through standard  
24 application process and pay the fee again to that  
25 process for the program?

1 MS. WOODRUFF: Yes. You would have to  
2 go through the standard initial authorization process.

3 MR. POWELL: Okay. Great. Thank you  
4 very much.

5 MS. WOODRUFF: You're welcome.

6 Haley Johnson from Brightwood College.

7 MS. JOHNSON: John usually does the  
8 speaking, so I'm going to read what he asked me to  
9 read.

10 After reviewing the THEC emergency  
11 rules, ECA has concerns that there's no provision to  
12 account for an institutional creditor losing its  
13 recognition by the U.S. Department of Education. As  
14 you know, we're accredited by ACICS. So we're facing  
15 that now.

16 In the emergency rules, no provision  
17 is made. If an accreditor loses recognition in an OEA  
18 school, by default, would have its OEA status revoked.  
19 The THEC director were to grant a conditional  
20 authorization to operate for that period. However,  
21 seeking new accreditation takes 12 to 18 months,  
22 especially if an accreditor were to lose its  
23 accreditation.

24 we're asking for a provisional. If an  
25 institution accreditor loses recognition, the executive

1 director or commission staff as delegated shall set a  
2 provisional time period within which institutions may  
3 continue to operate that coincides with the provisional  
4 time periods set by the U.S. Department of Education  
5 for affected institutions to seek a new accreditor.  
6 Once that provisional time period expires, Subsections  
7 A, B, and D shall apply to such institutions.

8 MS. WOODRUFF: Thank you. And I will  
9 note, you-all filed written comments as well.

10 MS. JOHNSON: We did, absolutely.  
11 Thank you.

12 MS. WOODRUFF: You're welcome.  
13 Andrea Stilwell from Interfaith  
14 Education Center for Community Dental Care.

15 MS. STILWELL: Our name is longer than  
16 my remarks probably will be. Likewise, I'll keep it  
17 very brief, but I want to thank the commission for all  
18 their hard work in coming together with this.

19 In the section of the new rules that  
20 pertains to regulations for specific institutions and  
21 programs where it references programs of interest to  
22 other state agencies, we would just like the commission  
23 to consider looking at the language, specifically for  
24 those in the dental field as it pertains to admitting  
25 students to single-day or two-day certification courses

1 only, which according to the rules with the Board of  
2 Dentistry calls for minimum standards for admissions to  
3 admit students who have been verified by the course as  
4 having a current registration.

5           So consideration of streamlining that  
6 documentation that's needed for those students only  
7 taking those single-day or two-day courses.

8           MS. WOODRUFF: Would you mind giving  
9 me an example of a course you offer where there would  
10 be a change to your admission requirement.

11           MS. STILWELL: Sure. So in this  
12 example -- and, again, it's a very small example, but  
13 for the course that we offer in sealant application,  
14 which is a single-day course, it is open to students  
15 currently enrolled in our full-time, eight-month  
16 comprehensive dental assistant training program but  
17 also open to students who are currently licensed,  
18 registered dental assistants. So for them it's a  
19 six-hour course.

20           So they have the same documentation  
21 standards as a student in the eight-month program,  
22 meaning an official copy of the high school transcript  
23 or a GED or HiSET documentation. Whereas the Board of  
24 Dentistry says for those certification courses, it's  
25 verification of a current license with the Board of

1 Dentistry.

2                   So for students enrolled in the  
3 comprehensive program, you know, not cumbersome at all,  
4 but for students just coming for that single-day or  
5 two-day course, then the burden is a little bit more  
6 challenging.

7                   MS. WOODRUFF: Okay. Thank you very  
8 much.

9                   I've got Laura Buchanan from Nashville  
10 Software School.

11                   MS. BUCHANAN: Hi again. Laura  
12 Buchanan.

13                   So we had a question about two things.  
14 One, in section .08 (2), is that a new provision that's  
15 being introduced? That's administratively cumbersome  
16 for us, so we were curious.

17                   MS. WOODRUFF: Can you explain? It is  
18 a provision that used to be in the rules and in the  
19 2008 version of the rules that was deemed void for  
20 procedural reasons that had nothing to do with the  
21 substance of the rules, so it was removed from the  
22 rules, but it was actually in place for a very long  
23 time.

24                   The reasoning behind it is in the case  
25 of institutions that may be closed that have taken

1 funds -- have taken money in advance and not able to  
2 return that. So I'm curious, how is it that it's  
3 cumbersome or what would your comment be?

4 MS. BUCHANAN: It compromises the  
5 flexibility of the students, especially those that are  
6 seeking financing, those who are reserving their place  
7 in the class. They want to do deposits in a million  
8 different ways. For us currently it would be -- we  
9 have a long prework assignment for folks that is at  
10 least 30 days out from the start of class that they  
11 need to be prepared with so that they can begin writing  
12 code day one.

13 So it causes difficulty if they  
14 haven't been able to kind of get some skin in the game,  
15 put down some of their tuition payment. We send them  
16 prework packets that they can work on, somewhere  
17 between 80 and 120 hours of prework that they begin  
18 before actual enrollment, which is day one in our  
19 program.

20 So 10 days is just short for us and  
21 the students, and it gives us only 10 days to process  
22 all of their payment prior to the code work beginning  
23 date.

24 MS. WOODRUFF: So when students get  
25 this prework, are they required to complete that before

1 actually attending a class?

2 MS. BUCHANAN: They are. Well,  
3 they're strongly encouraged. Of course, we can't make  
4 anyone do anything, but it's strongly encouraged or you  
5 will begin class way behind the rest. So it's  
6 absolutely recommended. It does require the  
7 purchase of a book on their own. It's like \$17. So we  
8 can't make them do it until they enroll. It's not a  
9 standard that they have to meet, but if they don't, and  
10 in our experience, they will be behind and not be able  
11 to catch up.

12 MS. WOODRUFF: So you do not -- or let  
13 me word this differently. At what point in time do you  
14 consider them to be enrolled?

15 MS. BUCHANAN: Day one.

16 MS. WOODRUFF: When they actually  
17 attend the class?

18 MS. BUCHANAN: Yes, when they show up.

19 MS. WOODRUFF: So the prework is not  
20 an assignment?

21 MS. BUCHANAN: No, it's not an  
22 assignment. We establish a tracking relationship with  
23 them through Treehouse where we can look at their  
24 portfolio and check the status of their work as they're  
25 preparing for class so that we can help anybody who's

1 derailed or doesn't know how to begin their studies.  
2 So it's assistive, but we can't require it prior to  
3 enrollment, but they are certainly encouraged to work  
4 on it and do so.

5 MS. WOODRUFF: Is there an alternative  
6 time period that you would recommend? We have 10 days  
7 in here currently.

8 MS. BUCHANAN: We would love 60 days.  
9 That would be awesome. That would get everybody into  
10 the fold.

11 MS. WOODRUFF: Anything else?

12 MS. BUCHANAN: One more thing. In  
13 Section .18 on the statistical data collections, the  
14 commission staff data form and I see further down on  
15 number (4) -- that begins on number (1), and on number  
16 (4), "Commission staff will provide institutions either  
17 a blank data form or a spreadsheet that is repopulated  
18 with continuing student data."

19 Is that available currently? Is it to  
20 become available, and when are we accountable for  
21 beginning that data collection in the format of this  
22 form?

23 MS. WOODRUFF: Okay. A blank form is  
24 available now. If you would like to see that, we can  
25 certainly, you know, show you what that looks like. So

1 generally what happens -- many of you are familiar with  
2 appendix (3), but your institution hasn't submitted an  
3 appendix (3) yet, have they?

4 MS. BUCHANAN: Right.

5 MS. WOODRUFF: Okay. So what was  
6 previously referred to as appendix (3), we're now  
7 calling the student data form. I don't know that there  
8 have been really many changes to it substantively. The  
9 form was always due at reauthorization.

10 So when your institution has to submit  
11 their first reauthorization, you will have to complete  
12 this form. For your institution, because this is your  
13 first time doing it, it will not be prepopulated. So  
14 what happens is after it's completed the first time,  
15 any students that were still enrolled by the end of the  
16 recording period, meaning they neither completed nor  
17 withdrew, will be prepopulated into your form for the  
18 next reporting period when you file your next  
19 reauthorization so that we continuously track each  
20 student until they either complete or withdraw.

21 Does that make sense?

22 MS. BUCHANAN: Sure. And what format  
23 is that?

24 MS. WOODRUFF: It is an Excel form  
25 right now, and Teresa can email you a copy of the blank

1 form.

2 MS. BUCHANAN: Awesome. Thank you.

3 MS. WOODRUFF: You're welcome.

4 Anything else?

5 MS. BUCHANAN: Not from me. Thank  
6 you.

7 MS. WOODRUFF: James Saulsbury,  
8 Remington College.

9 MR. SAULSBURY: I apologize. I  
10 thought I was signing in. No comment.

11 MS. WOODRUFF: Okay. I was trying to  
12 catch folks as we went through.

13 I'm sorry. I missed Chuck Steenburgh  
14 from National College. Did I pronounce that correctly?

15 MR. STEENBURGH: Steenburgh.

16 My comments likewise will be short. I  
17 would like to echo the comments earlier made, the  
18 thanks by my colleague from the University of Phoenix  
19 and -- I'm sorry -- but the dentistry lady -- that is a  
20 long name. That is hard to remember. And also my  
21 colleague from Brightwood.

22 As you know, National College is also  
23 ACICS accredited. There are 17 ACICS campuses of  
24 various institutions here in Tennessee, and like almost  
25 every other state, none of the state regulatory

1 language anticipated really the loss of recognition by  
2 an accreditor. And so some of the states we operate  
3 in, notably Virginia and Ohio, have adopted new  
4 language or regulatory provisions that echo the  
5 expected provisional operating authority that the  
6 Department of Education may or may not grant, and we  
7 would just encourage the State of Tennessee to do the  
8 same.

9 MS. WOODRUFF: Great. Thank you very  
10 much.

11 MR. STEENBURGH: Thank you.

12 MS. WOODRUFF: I think that is  
13 everyone we have on our list. Are there -- having  
14 heard everything, does anyone have anything else they  
15 want to add?

16 (No response.)

17 MS. WOODRUFF: So I will just remind  
18 you again. We're going to take all of the comments --  
19 this is being transcribed. We'll take all the  
20 comments. There's still an opportunity to provide  
21 written comments through the end of today. If you  
22 wanted to file those, you may. We'll take all the  
23 comments under consideration and make our  
24 recommendations to our committee who will hear those on  
25 November 2nd or will get the recommendations and make a

1 determination as to what they will recommend then to  
2 the commission.

3                   Hopefully, it will be presented to the  
4 commission on November 16th. Those will then go to the  
5 attorney general's office for a final review. Mind  
6 you, the attorney general has already looked at these  
7 once though the emergency rulemaking process. They  
8 will go back to the office for a final review before  
9 they go to the secretary of state's office.

10                   Are there any other questions or  
11 comments?

12                   (No response.)

13                   MS. WOODRUFF: I appreciate it. Thank  
14 you-all for coming today.

15                   (Proceedings concluded at  
16 1:28 P.M.)

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REPORTER'S CERTIFICATE

I, Christina A. Meza, Licensed Court Reporter, Registered Professional Reporter, Certified Court Reporter, and Notary Public for the State of Tennessee, hereby certify that I reported the foregoing proceedings at the time and place set forth in the caption thereof; that the proceedings were stenographically reported by me; and that the foregoing proceedings constitute a true and correct transcript of said proceedings to the best of my ability.

I FURTHER CERTIFY that I am not related to any of the parties named herein, nor their counsel, and have no interest, financial or otherwise, in the outcome or events of this action.

IN WITNESS WHEREOF, I have hereunto affixed my official signature and seal of office this 20th day of October, 2016.

---

CHRISTINA A. MEZA, LCR, RPR, CCR  
AND NOTARY PUBLIC FOR THE STATE  
OF TENNESSEE

LCR No. 164 Expires 6/30/2018

Notary Commission Expires 6/15/2019



Received  
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THEC  
DPSA

October 3, 2016

Julie Woodruff  
Assistant Executive Director and Lead Attorney  
Tennessee Higher Education Commission  
Parkway Towers, Suite 1900  
404 James Robertson Parkway  
Nashville, TN 37243-0830

Re: Permanent THEC OEA Rules

Dear Ms. Woodruff:

Education Corporation of America (ECA), on behalf of its Tennessee – Brightwood College and Virginia College -- submits the following comments for consideration by the Tennessee Higher Education Commission (THEC) at its October 6, 2016 hearing on permanent rulemaking on OEA. After reviewing the THEC Emergency Rules, ECA has concerns that there is no provision to account for an institutional accreditor losing its recognition by the U.S. Department of Education.

Under Section 1540-01-10-.06 REVOCATION OF OEA STATUS in the Emergency Rules, no provision is made for the circumstance where an institutional accreditor loses its recognition by the U.S. Department of Education. If an accreditor loses its recognition, an OEA school by default would have its OEA status revoked. Section 1540-01-10-.06(3)(a)-(d) would immediately come into effect and, at best, an OEA institution would have 6 months to find a new accreditor if the THEC Executive Director were to grant it conditional authorization to operate for that period. However, seeking new accreditation takes 12-18 months especially if an accreditor were to lose its recognition.

Additions should be made to Section 1540-01-10-.06 REVOCATION OF OEA STATUS in the permanent rules to take into account if an accreditor loses its recognition. A sub (c) should be added to section (1) as follows:

(c) If an institution's accreditor is removed from the U.S. Department of Education's list of recognized accreditors.

To provide OEA institutions an accommodation to find a new accreditor should its current accreditor lose recognition, a sub (e) should added to section (3) of 1540-01-10-.06

Julie Woodruff  
October 3, 2016  
Page 2 of 2

(e) However, none of the above subsections (a) through (d) shall apply if an institution's accreditor is removed from the U.S. Department of Education's list of recognized accreditors. If an institution's accreditor loses recognition, the Executive Director, or Commission staff as delegated, shall set a provisional time period within which institutions may continue to operate, that coincides with the provisional time period set by the U.S. Department of Education for affected institutions to seek a new accreditor. Once that provisional time period expires, subsections (a), (b) and (d) shall apply to such institutions.

Please consider these revisions to make it clear that a revocation will not proceed so long as an institution is within the provisional time period set forth by THEC.

Thank you for your consideration. Please contact me at [john.carreon@ecacolleges.com](mailto:john.carreon@ecacolleges.com) or 312.638.5807 if you have questions or would like additional explanation.

Sincerely,

A handwritten signature in black ink that reads "John P. Carreon". The signature is written in a cursive style with a large, sweeping initial "J".

John P. Carreon  
Senior Vice President, Regulatory Affairs and Associate General Counsel

October 6, 2016

Julie Woodruff, Esq.  
Assistant Executive Director & Lead Attorney  
Division of Postsecondary State Authorization  
Tennessee Higher Education Commission  
Parkway Towers - Suite 1900  
404 James Robertson Parkway  
Nashville, Tennessee 37243-0830

Received

OCT 06 2016

THEC  
DPSA

Re: Exemption from Authorization of Franchising Training Programs Under the Division of Postsecondary State Authorization's Proposed Rules Pertaining to Authorization and Regulation of Postsecondary Education Institutions and Their Agents

Dear Ms. Woodruff:

We appreciate the opportunity to provide these comments on behalf of several Tennessee-based franchisors.

We understand that a rulemaking hearing is scheduled to be conducted by the Division of Postsecondary State Authorization ("DPSA") of the Tennessee Higher Education Commission ("THEC") on Thursday, October 6, 2016. The public notice indicates that this hearing will consider proposed rules pertaining to "Authorization and Regulation of Postsecondary Education Institutions and Their Agents," which are identical to "emergency" rules filed with the Tennessee Department of State, Division of Publications on August 15, 2016, with an effective date of October 3, 2016. We respectfully submit these comments to the proposed rules in support of our request that DPSA explicitly exempt from the postsecondary authorization requirement the training programs which are operated and provided by franchisors in Tennessee for the benefit of their franchisees. We have taken the liberty of suggesting proposed exemption language to the applicable rule.

Franchisors and franchisees are a dynamic and essential part of the Tennessee economy. Franchising is a unique business model which has been successfully applied in many industries and sectors. Franchisees are independently owned and operated, and provide opportunities for businesses both small and large to adopt an established business model and to offer goods and services under a brand. The franchising business model has created tens of thousands of business owners and opportunities for millions of workers. We believe that there are more than 17,000 independently owned and operated franchising businesses in Tennessee, which provide approximately 200,400 jobs, with a \$16.9 billion contribution to the state's economy.

Many of the Tennessee-based franchisors, as well as some franchisors with headquarters outside of Tennessee, provide training programs to their franchisees through training facilities and classes operated for this purpose in Tennessee. While franchisee training programs are an important hallmark of the franchisor business model, educational and training services are not the primary purpose of the franchisor's business. Thus, a franchisor training program should not be considered to be within the purview of the authorization rules of the DPSA. Moreover, most franchisor businesses are regulated by other Tennessee state departments and agencies. Importantly, franchisors are required to give very detailed pre-sale disclosures by the Federal Trade Commission (*see* 16 Code of Federal Regulations 436). Therefore, if DPSA inserts itself to assert jurisdiction over franchisor businesses, its authorization requirements would pose an unnecessary and additional burden on these businesses.

We respectfully request that DPSA incorporate into its final proposed rules an explicit rule provision that training programs operated by franchisors in Tennessee for the exclusive benefit of their franchisees and their employees are exempted from having to be authorized by DPSA as a postsecondary education institution. This provision would fall in Rule 1540-01-02-.05(1)(a). Respectfully, we submit the DPSA rules on Authorization and Regulation of Postsecondary Education Institutions and their agents pertain to businesses which are primarily established to provide educational services, such as those businesses that advertise such educational services as their primary business purpose, and which offer such services to the general public.

Specifically, a franchisor's primary business is not that of educating the general public. Instead, a franchisor furthers a business model that creates multiple, local business owners. Although most franchisors offer some type of training as part of the support provided to franchisees, that tangential training is typically focused on confidential and proprietary methods to ensure that franchisees can implement the franchisor's business model. The training and related materials typically also focus on proprietary software used by that specific franchisor. Additionally, the franchisor's operations manuals and other training materials are confidential and exclusive to the franchising business. A franchisor's training programs are not intended or designed to prepare an individual for a field of endeavor. Finally, and most important, the franchisor's franchise system is a closed network. Initially, before any training can take place, the franchisee must enter into a franchise agreement with the franchisor. While the franchisor dictates specifics of the business model, the franchisor does not provide day-to-day supervision or control over the franchisee's business or the franchisee's employees. With respect to training, that training is offered through the franchisor to a closed group consisting of the franchisee and, in some instances, certain of the franchisee's employees. A franchisor does not provide training to the general public or to persons who do not have an existing employment relationship with a franchisee. Moreover, franchise employees are not required to pay for training. If there is a cost for training, it is borne by the franchise business owners who are parties to the franchise license agreement.

Julie Woodruff, Esq.  
October 6, 2016  
Page 3

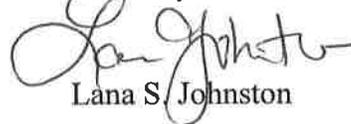
The DPSA rules for postsecondary authorization contemplate regulation of institutions in the business of educating the general public, with a focus on preparing the individual, through courses of instruction or study, for test preparation. We respectfully submit that the rules are simply unnecessary in the context of application to franchise training programs provided and operated by franchisors in Tennessee. In fact, the rules are overreaching and burdensome to franchisors which are attempting to ensure that their franchisees have the specific tools to operate a method of doing business unique to each particular franchisor.

Last, we respectfully request that DPSA incorporate into its final proposed rules an explicit rule provision, under Rule 1540-01-02-.05(1)(a), that takes into account the franchising business model, wherein the business does not advertise as a school, and sponsors or conducts courses of instruction or study to a closed network of franchise owners and employees. To qualify, the training or instruction shall not be the primary activity of the franchisor business. Therefore, we propose a new subsection (a)(5) be added to Rule 1540-01-02-.05(1) pertaining to exemptions from authorization, that reads as follows:

***5. Given to a closed network of franchise owners and their employees, through a franchisor that does not advertise or provide its training to the general public, and wherein such training is not the primary business of the franchisor.***

If you have any further questions, please do not hesitate to contact me at (615) 850-8478. We appreciate your time and consideration of our comments and suggestions.

Sincerely,



Lana S. Johnston

cc: Latonya Todd, Esq., Director of DPSA and Managing Attorney